

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

VANDROTH BACKUS, et al.,

Plaintiffs

CV NO. 3:11-3120

Columbia, SC

March 1, 2012

-against-

THE STATE OF SOUTH CAROLINA,
et al.,

Defendants

BENCH TRIAL

BEFORE: HON. MARGARET B. SEYMOUR
CHIEF UNITED STATES DISTRICT COURT JUDGE
HON. HENRY F. FLOYD
FOURTH CIRCUIT COURT OF APPEALS JUDGE
HON. PATRICK MICHAEL DUFFY
SENIOR UNITED STATES DISTRICT COURT JUDGE

TRIAL TESTIMONY OF BAKARI SELLARS

APPEARANCES:

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16 STENOTYPE/COMPUTER-AIDED TRANSCRIPTION
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1 JUDGE FLOYD: All right. Good morning. A couple of
2 preliminary things. Is there a Mr. Beam from The State
3 Newspaper in here? Okay. We let you have your computer in
4 here but you can not transmit it or take any photographs. And
5 if we find out you did we will hold you in contempt.

6 MR. BEAM: Yes, sir.

7 JUDGE FLOYD: Okay.

8 JUDGE DUFFY: But we don't want to do that, right?

9 JUDGE FLOYD: I want to thank Judge Duffy for his
10 work in the pretrial effort. I understand there may be a
11 couple of preliminary issues that we need to take up, because
12 apparently you all stayed up until midnight last night filing
13 things, and this morning, I understand.

14 JUDGE DUFFY: I'll try to recall all of them and
15 comment on them. If I miss anything y'all call it to my
16 attention. Each side has asked or filed a motion to
17 reconsider regarding the rulings on the affidavits. First, as
18 to the defendants' wish to add back entire affidavits of
19 certain witnesses and portions of others, I'll tell you it was
20 a close call but in considering it the first time I thought
21 about it along the lines you submitted it, but I think it's
22 most fair to both sides to exclude them in toto, so I'm going
23 to remain with that ruling.

24 As to the plaintiffs' objections, I will tell you I
25 gave more leeway to Senator Brad Hutto in allowing his

1 testimony because of his position, and the things that you
2 brought out in the motion to reconsider don't tempt me to go
3 further than that. So I'm going to stick with that ruling, as
4 well.

5 There were certain things that came up concerning
6 qualifications of expert witnesses and methodology and things
7 of that kind I told you we would take that up at trial. I
8 think when the witnesses are called we will have a proper voir
9 dire and proper cross-examine and we will allow it to be
10 handled in that way. And anything else, you all let us know
11 as we go.

12 Is there anything that I have not mentioned that
13 needs to be addressed prior?

14 MR. STEPP: May it please the court, Bobby Stepp,
15 your Honor, for defendant Harrell. A couple of housekeeping
16 matters. We have designated and exchanged exhibits and I
17 think the most expedient thing, if the court would permit us,
18 is move the introduction of all the exhibits. We have filed
19 those that could be filed and we submitted exhibit lists.
20 There were no objections by the plaintiffs to the defendants'
21 exhibits, so rather than having to sort of offer them and
22 proffer them and mark them and all that, I would just move
23 their introduction en masse.

24 I think we objected to a few of the plaintiffs'
25 exhibits and we have got a motion pending about that. But

1 subject to those objections I will certainly not object to an
2 en masse introduction of the plaintiffs' evidence, either.

3 JUDGE FLOYD: Any objection, Mr. Harpootlian?

4 MR. HARPOOTLIAN: No, sir. But, for the record, I
5 think primarily what they have objected to with us are
6 demonstrative maps that we designed based on the block files,
7 block files could be a data file. Do you continue to object
8 to those?

9 MR. STEPP: I don't have them in front of me, but I
10 need to protect my record, so yes. Hold on.

11 (There was a pause in the proceedings)

12 JUDGE DUFFY: We don't have a jury present so we can
13 be a little more informal than we usually would be. But you
14 can put those things in and we can sort them out.

15 MR. HARPOOTLIAN: Yes, your Honor.

16 MR. STEPP: We withdraw our objections to maps on
17 block files. We may be using some ourselves.

18 JUDGE FLOYD: Let me say that since we're sitting as
19 a panel today, Judge Seymour and I agree with Judge Duffy's
20 rulings and adopt them. Of course, we always have the right
21 before the issuance of a final order to change any ruling
22 that's been made in the case, and we will reserve that right.

23 As Judge Duffy said, this is a bench trial. I think
24 all of you believe that we understand what's relevant, what's
25 admissible, what's not. Throw your case up there, we will

1 sort it out. And let's not get too technical here so we get
2 the thing over with. We're shooting to file an order by
3 March -- by next Friday and that's going to be a real task.
4 So, Mr. Harpootlian, are you ready?

5 MR. HARPOOTLIAN: Yes, sir, your Honor. Let me, if I
6 could make just a brief statement, not an opening statement,
7 about how we're going to do this and make sure there's no
8 objection. We intend on calling, based on the court's
9 previously rulings, two witnesses today and that would be our
10 case. The first witness would be Representative Bakari
11 Sellars, the second witness would be our expert Dr. McDonald.

12 I want to make sure I understand that all of our
13 exhibits, all their exhibits are in so we don't need to go
14 through the process of authenticating things. And, two, I
15 want to make sure we understand, that I understand, I'm sure
16 y'all understand but I want to make sure I have the same
17 understanding, that during this process because it is -- there
18 is no jury here, we may be allowed a little more leeway in
19 terms of how we proceed. I know leading questions are not
20 normally allowed, but if it's getting to not something
21 critical if we can just cut to the chase it would help
22 immensely in terms of moving this forward.

23 We believe we can easily finish our case today. I've
24 talked to Mr. Stepp, they intend on calling one witness, their
25 expert, tomorrow. So we could even perhaps finish early

1 tomorrow. And I understand the court wants this expedited and
2 we're going to attempt to try to do that. Again, if I do
3 lead, I'm sure too much, Mr. Stepp will object. But I'm going
4 to try to cut to the --

5 JUDGE FLOYD: We will give you as much room as we
6 can.

7 MR. HARPOOTLIAN: Yes, sir. The judge is not a jury,
8 and y'all can certainly --

9 JUDGE FLOYD: And your assumption about your exhibits
10 is correct.

11 MR. HARPOOTLIAN: Right. Thank you.

12 JUDGE FLOYD: You may proceed.

13 MR. HARPOOTLIAN: Bakari Sellars. While he's walking
14 up there, Mr. Stepp reminds me, Mr. Chris Kenney who is an
15 associate in my firm, has been trying to get his 403
16 experience. But with the scheduling order the court set, Mr.
17 Kenney was the one filing stuff at 1:00 o'clock this morning,
18 not me. I would ask that since there's no opening statement
19 or closing statement that the court allow this to serve as a
20 403 for him.

21 JUDGE FLOYD: We don't have a problem with that.

22 MR. HARPOOTLIAN: Okay. Thank you.

23 MR. KENNEY: Thank you very much.

24 JUDGE DUFFY: We will not suffer through those.

25 MR. HARPOOTLIAN: I waived an opening statement just

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1 to get his --

2 (Bakari Sellars duly sworn)

3 MR. HARPOOTLIAN: May it please the court. May I
4 question from back here rather than going to the podium? I
5 mean, I've just got a whole mess of stuff that --

6 JUDGE FLOYD: That's fine. We're not going to have
7 any trouble hearing you anyway.

8 MR. HARPOOTLIAN: I'm going to speak up as loud as I
9 can.

10 DIRECT EXAMINATION

11 BY MR. HARPOOTLIAN:

12 Q. State your full name for the record, please.

13 A. Bakari Sellars.

14 Q. And, Mr. Sellars, where do you reside?

15 A. Denmark, South Carolina.

16 Q. And are you -- let's find out very briefly, did you attend
17 college?

18 A. I did. I went to Morehouse College.

19 Q. Morehouse College. And are you a member of the House of
20 Representatives of the state of South Carolina?

21 A. I am. This is my third term.

22 Q. Your third term. You're completing your third term this
23 year?

24 A. Yes, sir.

25 Q. So you were not a member of the legislature in 2002.

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1 A. I was not.

2 Q. Now, did you serve on the election law subcommittee of the
3 House of Representatives?

4 A. I did and still currently do.

5 Q. I'm sorry?

6 A. I still currently do, correct.

7 Q. And how about tell the court, and, again, I'm sort of
8 jumping ahead real quick, but there was a reapportionment
9 process considered by the House of Representatives this year,
10 correct?

11 A. Correct.

12 Q. And that includes the House of Representatives, the state
13 Senate and the Congressional plans.

14 A. We did not deal with the state Senate, we just dealt with
15 the House of Representative and the Congressional plan.

16 Q. You all voted on the state Senate plan.

17 A. We did vote on the --

18 Q. The subcommittee did not deal with that.

19 A. We did not.

20 Q. The House of Representatives and the Congressional plan.

21 A. Correct.

22 Q. When you say you dealt with it, what was the process? Why
23 was there a subcommittee? What -- how was that supposed to
24 work?

25 A. It was supposed to be treated and it was treated like any

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1 other bill that we passed in the House of Representatives.

2 Our committee met, we had a series of public hearings, eight
3 or nine public hearings. We had some time after those public
4 hearings where we had a map room, and individuals were able to
5 go in and try to create what they wanted their districts to
6 be. And then we created -- we drafted an amendment. Well, an
7 amendment was drafted and it was treated like a bill and we
8 had the opportunity to amend that amendment. It then went
9 from the subcommittee to the full committee, from the full
10 committee to the House floor.

11 Q. Okay. So let's talk a little bit about the public
12 hearings. What kind of public hearings did you have?

13 A. With went to Denmark, Aiken, Summerville, Greenville, we
14 went to different -- Myrtle Beach. We went to different
15 locations around the state and solicited public input on the
16 lines that were being drawn.

17 Q. And what kind of public input were you looking for?

18 A. Well, we heard from everyone from service groups like the
19 NAACP and League of Women Voters, we heard from elected
20 officials, we heard from the Mayor of Anderson, we heard from
21 county council officials in Colleton, we heard from average
22 citizens across the state.

23 Q. What were you wanting to hear?

24 A. We wanted to hear about the principles in which we were
25 going to draw these districts. We wanted to hear about

1 communities of interest, we wanted to hear about where
2 people -- where these communities of interest may have been.
3 We wanted to hear about where people felt the lines should
4 have been drawn. So we were soliciting input from average
5 everyday South Carolinians, attempting to put these lines
6 together.

7 Q. Okay. And let's talk about this map room. Tell me what
8 the map room was.

9 A. The map room was located on the third floor of our House
10 Office Building. It's a room in which all of our
11 technological equipment is, where staff was to help you draw
12 your lines, where we had a log that you had -- you had to sign
13 in and out of. It was just a room full of computers and maps.
14 That's where we did our work.

15 Q. The maps being drawn, was they somebody sketching them out
16 by hand or were computers being used?

17 A. All computers.

18 Q. All computers. And was there staff?

19 A. Yes, there were traditionally three staff, House staff
20 that were helping Emma Dean, Patrick Dennis and Thomas, I
21 can't recall his last name. And the speaker staff may have
22 been in and out, but I didn't have any direct communication
23 with them.

24 Q. But your characterization of this process of being able to
25 use the map room and this process of attempting to draw

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1 districts using computers, was it good, was --

2 A. I think that the process was sound. I think that the
3 ability to go out and meet our constituents, the ability to go
4 in a map room, I think that it was all in good spirit. I
5 think the process was very sound.

6 Q. And as a result of this a bill was passed, and we will
7 come back to that in just a second. Your House district is
8 number 90?

9 A. It is.

10 Q. Do you have any objection to how your House district --

11 A. Not at all. In fact, I look forward to serving the people
12 of Bamberg along with Colleton County.

13 Q. Prior to this new reapportionment -- you're familiar with
14 the term BVAP?

15 A. Correct.

16 Q. And what does that stand for?

17 A. Black voting-age population.

18 Q. And did the black voting-age population in your district
19 increase or decrease as a result of the reapportionment plan?

20 A. Decreased.

21 Q. And what -- do you know what --

22 A. I think it went down about four percent maybe. I was not
23 a -- I was not above 50 percent at any time, I was about 48, I
24 think, 48, 49. It was not --

25 Q. About 44?

1 A. I think about 44, 5.

2 Q. So you were elected in a district which was not majority
3 African American.

4 A. Correct.

5 Q. And you now have a district which is not majority African
6 American.

7 A. Correct.

8 Q. Now, this process that y'all went through, the hearings,
9 the map room, the discussion, based on your participation in
10 that process was -- did race play any part, first of all, any
11 part in this process, consideration of race?

12 A. Consideration of race was a predominant factor. It was --
13 in many cases it was the only factor.

14 Q. The only factor?

15 A. In many cases.

16 Q. And tell me why you believe that.

17 A. I can recall a number of instances in which I proposed
18 amendments or other members proposed amendments and staff
19 would just point out to Chairman Alan Clemmons what the BVAP
20 would look like, voting-age population was of a particular
21 district, and Chairman Clemmons would object or move to table
22 that amendment. There were three Republicans on the
23 committee, two African Americans, and immediately based on
24 that -- any decrease in BVAP immediately he would move to
25 table any amendment that was put forth and surrounding that

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1 Amendment number 1 which he crafted.

2 Q. Amendment number 1, please tell the court what Amendment
3 number 1 --

4 A. Usually we draft bills, you go in your office and come up
5 with the wonderful dreams of what a bill should be and you put
6 in a bill. In this case we didn't necessarily have a bill,
7 but Amendment number 1 was the vessel that appears before us
8 that --

9 Q. How was that designed, do you know?

10 A. I just -- you know, I was in the map room every day and I
11 was the person who would go in and attempt to talk with, you
12 know, staff, or even pull down what was being drawn daily. I
13 recall one instance going in on a, I can't recall the date,
14 the log should be able to tell you, but I went in and it was
15 the day after Representative Clemmons and Harrison and Harrell
16 had been in, and the soon thereafter we had Amendment number
17 1.

18 Q. Did you participate in drawing the Amendment number 1?

19 A. No.

20 Q. Do you know anybody that did?

21 A. No.

22 Q. And so it appears -- well, is there a name attached to 3?

23 A. I believe it's Clemmons.

24 Q. So Representative Clemmons, he is from where?

25 A. Horry County.

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1 Q. And he is white or African American?

2 A. White.

3 Q. And he is a Republican or Democrat?

4 A. A Republican.

5 Q. Okay. And that 3, was that just the House or was that
6 House and Congress.

7 A. No, it was just the House. We treated Congress like a
8 separate bill.

9 Q. That would have been a --

10 A. That would have been a separate --

11 Q. So let's talk about 3, which is just the House. And you
12 indicated a process where you would propose amendments. What
13 kind of amendments were you proposing?

14 A. Various amendments. You know, I recall I tried to
15 implement what we heard in public hearings.

16 Q. Which was?

17 A. Which, for example, Anderson County, the Mayor of Anderson
18 testified that he wanted to try to keep his community whole.
19 And the City of Anderson has a decent percentage of black
20 voting-age population, and I made efforts, many efforts, to
21 keep that community whole. Instead, what was drawn was the
22 African American population in those districts was -- was
23 fragmented and put into various districts. I specifically
24 recall many instances where we tried to deal with my colleague
25 Mia Butler's district and the fact she was able to win in a

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1 non-majority district, and those efforts were rebuffed. I
2 mean, there were a series of amendments. I tried to deal with
3 my own district and had some dialogue with Lonnie Hosey, who
4 is another African American, a member of the African American
5 Black Caucus. We addressed our district and that was
6 rebuffed.

7 Anything that would take a district, if you had a black
8 voting-age population of let's say 95 and you want to take it
9 to 94-and-a-half, that would be tabled. They had a hard, fast
10 line, which I felt was incorrect, that they were not reducing
11 black voting-age population in any district regardless of how
12 high it was. It was an attempt to resegregate.

13 Q. What?

14 A. Resegregate.

15 Q. Okay. And when the subcommittee was considering an
16 amendment by you or someone that would be proposing an
17 amendment which would reduce black voting-age population in a
18 district, even keeping it above 50, were any other criteria
19 considered such --

20 A. No.

21 Q. -- compactness or --

22 A. No.

23 Q. Communities of interest?

24 A. No. No, we did not deal with compactness, communities of
25 interest. We did at some time deal with incumbency. We did

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1 not deal with the public comments or testimony that we heard.
2 We did a very good job of window dressing. The process was
3 sound; however, when it came to the implementation the only
4 factor that was used was race.

5 Q. Now, you indicated a moment ago that there was a process
6 where an amendment was proposed and you mentioned the name
7 Patrick Dennis. Who is he?

8 A. Patrick Dennis is our chief counsel of the judiciary
9 committee.

10 Q. The judiciary committee?

11 A. Correct.

12 Q. And you indicated he would communicate some information --

13 A. Any bill we put up, any amendment that we put up, it did
14 have the black voting-age population on it and Patrick would
15 highlight or just point, just giving information, purely -- he
16 was not making a decision, he was just purely giving
17 information to the chairman. The chairman would then move to
18 table. He had three votes, and it didn't matter what the
19 amendment was, if that black voting-age population went down a
20 percentage point he would --

21 Q. And did you ever talk to Mr. Clemmons about this?

22 A. At length.

23 Q. And his reasoning for doing that --

24 A. I talked to Mr. Clemmons. I even talked to -- attempted
25 to talk to House counsel about this, and he did not have a

1 reason. I felt as if he was perverting the law. I even told
2 him that on numerous occasions. But he did not -- he did
3 not -- he just said this is what he was going to do.

4 Q. Mr. Clemmons did?

5 A. Correct.

6 Q. Did you attempt to discuss with him Mia Butler's district?

7 A. I did.

8 Q. And how she was getting reelected with a 31 percent
9 African American --

10 A. And I went one step further. Not only was she getting
11 reelected, there was a gentleman before her, Anton Gunn, who
12 had come very close to winning six years ago but did win four
13 years ago in a district that was that same makeup. We talked
14 about there was -- even instances where I talked about a
15 coalition district where we pull case law and talk about
16 putting African Americans and minorities together to create
17 these majority-minority districts, I talked to counsel about
18 that. We even had sidebars with counsel.

19 Q. Counsel being who?

20 A. That's where I get a little confused. Counsel being
21 those -- the defendants.

22 Q. The gentleman right here?

23 A. The young guy with gray hair, yes.

24 Q. That would be Bobby Stepp?

25 A. Yes.

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1 Q. And you talked to -- attempted to talk to Mr. Stepp about
2 it?

3 A. I did. And everyone that we had as, quote-unquote, House
4 counsel, correct.

5 Q. Did you get any answers from any of them?

6 A. I really didn't. I thought the travesty was that -- I
7 thought that the travesty was that there was a hard, fast line
8 which I felt was not rooted in anything, it was an attempt to
9 use race as a predominant factor to draw the districts that we
10 have now.

11 Q. Now -- I'm sorry, we're having technical difficulties. I
12 want to pull up the map. Does the witness have a monitor he
13 can see?

14 A. I do.

15 Q. Let's talk a little bit about --

16 (There was a pause in the proceedings)

17 Q. (MR. HARPOOTLIAN) Let me -- we're going to put up here
18 Amendment number 8, a map exhibiting the characteristics of
19 Amendment number 8. Is that you?

20 A. I believe so.

21 Q. Pardon me?

22 A. I believe so.

23 Q. Okay. I apologize to the court, our technical prowess is
24 not great. If Mr. Kenney doesn't get this up in couple of
25 minutes I'm going to withdraw my earlier motion.

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1 (There was a pause in the proceedings)

2 MR. HARPOOTLIAN: You know, in the old days we just
3 have a big old blowup and I'd show it to him. Allegedly this
4 is supposed to work better. I'm not quite sure about that.
5 We will see.

6 JUDGE DUFFY: It's better when it works.

7 MR. HARPOOTLIAN: I apologize to the court.

8 Q. (MR. HARPOOTLIAN) Can you see the map?

9 A. I can.

10 Q. Does that represent Amendment number 8?

11 A. It does.

12 Q. And what -- this was your amendment?

13 A. Correct.

14 Q. And how does did differ from 3, the plan that was
15 produced?

16 A. This actually is my district. If you look in the green
17 it's House District 90. HD90 is in the forest green, I
18 believe.

19 Q. In the middle?

20 A. In the middle. I have a portion of Orangeburg County, the
21 western portion of Orangeburg County which I currently have,
22 to Norway, and then I go down to Colleton County. And this
23 is -- in this amendment. The reason being is because we heard
24 testimony from -- public input from the people of Barnwell,
25 because I currently have a very small portion of Barnwell, and

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1 they wanted to keep their community whole. They wanted to
2 have the same representative for the entire community instead
3 of me representing 40 people -- 400 people, if that. So I put
4 this amendment up attempting to abide by the traditional
5 principles of redistricting and I got agreement from Lonnie
6 Hosey who represents District 91, which is a very good friend
7 of mine and fellow African American member of the General
8 Assembly. We agreed, I took this amendment to Representative
9 Clemmons --

10 Q. One second. I put a blue arrow up here. This is part of
11 your -- what you propose in District 90, is that correct?

12 A. Right.

13 Q. And then that's Colleton County, that's Bamberg, and the
14 third top, what county is that?

15 A. Orangeburg.

16 Q. Orangeburg County. Okay. So the communities of interest,
17 you were trying to keep Barnwell whole. Why is Barnwell in
18 here?

19 A. I currently have 400 people in Barnwell, and in the redraw
20 I have a little bit more people, and in Amendment 1 I have a
21 slightly larger number of people in Barnwell. And but after
22 discussions with Representative Hosey, who in fact is an
23 incumbent, long-serving member of ways and means, wanted to
24 actually keep Barnwell whole, we came up with this amendment.

25 Q. And would you get Barnwell or would he?

1 A. He would.

2 Q. Okay. So you took out your 400 votes of Barnwell and gave
3 it to Mr. Hosey.

4 A. Correct.

5 Q. Now, was there a discussion on this in front of the --

6 A. Yes.

7 Q. -- the subcommittee?

8 A. Correct.

9 Q. And I think we have a recording of that. Can we play
10 that, please?

11 A. Yes, sir.

12 MR. HARPOOTLIAN: We don't have a transcript, do we?

13 Q. You heard this played before, right?

14 A. Right.

15 Q. And this would be Mr. Clemmons. This would be Exhibit
16 number 66RWT22017, May 23, 2011, at 2:05 to -- 2:05 to
17 2:09:05.

18 (There was a pause in the proceedings)

19 (Audio played)

20 MR. KENNEY: I believe that's the wrong day. I
21 apologize.

22 (There was a pause in the proceedings)

23 MR. HARPOOTLIAN: I apologize. This is going to take
24 a couple of seconds. Your Honor, I have a transcript, I could
25 read portions of it, he can read a portion of it. Do you have

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1 an objection?

2 (There was a pause in the proceedings)

3 MR. HARPOOTLIAN: This is it.

4 (Audio played)

5 Q. (MR. HARPOOTLIAN) Is that you?

6 A. Yes.

7 (Audio played)

8 Q. Mr. Clemmons is about to respond to you?

9 A. Maybe.

10 (Audio played)

11 Q. So that is a discussion between you and Mr. Clemmons on
12 the record in the subcommittee about an amendment you made
13 that could keep Barnwell whole, is that correct?

14 A. Correct.

15 Q. And his response to you is that if you do that to make
16 that work you decrease Mr. Hosey's district --

17 A. I took his district from 52-and-a-half to 53 percent or
18 50.1 -- 50.5, excuse me.

19 Q. Okay. To 50.67?

20 A. Yes.

21 Q. And he says you can't do that?

22 A. Correct.

23 Q. And you can't do that why?

24 A. He didn't give a why in anything he did. There was never
25 a why given in -- and my reason for attempting to ask our

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1 hired counsel for a legal opinion and take a break was so that
2 we could actually get a why. But that never was given. The
3 only issue that Alan Clemmons ever had in his mind, as you
4 listen to the tape, he did not discuss public testimony, he
5 did not discuss communities of interest, the only thing he
6 talked about was race. That's the only thing he ever talked
7 about. That was his only basis for tabling anything that came
8 up in our subcommittee.

9 Q. How many people were on the subcommittee?

10 A. Five.

11 Q. And you indicate two African Americans?

12 A. Correct. Karl Allen was there along --

13 Q. Okay. And the other members of this committee, when he
14 made a motion to table, is there any discussion?

15 A. I never had any discussion with them. It was rare. Most
16 of my discussion, which if you listen to all six hours or
17 eight hours of tape, which got somewhat heated at times, was
18 with the chairman.

19 Q. And when you indicated on the record, you said if you
20 balance that with what we heard this morning about the simple
21 fact of people wanted people to keep Barnwell County whole,
22 this line that you can't take black people's percentages down
23 is not actually what the law says, was there any response,
24 either on the record or off the record, about keeping Barnwell
25 County whole?

1 A. There was public testimony about keeping --

2 Q. I'm talking about from Mr. Clemmons when you said keep it
3 whole.

4 A. No. And even -- there was not even a comment from counsel
5 about the principles.

6 Q. Okay. Did you make Amendment number 13?

7 A. Yes.

8 Q. Okay. Can we see Amendment number 13?

9 A. This is my --

10 Q. Do you -- how do you get those blue arrows off there?

11 There we go. Do you recognize this map?

12 A. Yes. This is Joe Jefferson's district, I believe.

13 Q. Which is district number what?

14 A. Joe is 102.

15 Q. Okay. And what was -- what was your issue there?

16 A. I mean, all of them were -- I mean, in many instances I
17 was trying to keep communities together, I was going to the
18 members, to the incumbent, listening to what they had to say,
19 because incumbency is a major issue, and listening to what we
20 heard in our public testimony and draft districts based on
21 that.

22 Q. And what was your issue with communities of interest in
23 this district, do you remember?

24 A. Yes. I was -- I know that this one had to do with Patsy
25 Knight, as well. She was 97, I believe, in Dorchester County.

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1 And all I was -- all I was attempting to do on this map, all I
2 was attempting to do in this amendment, like I was trying to
3 do in many other instances, and I thought we were going to
4 have success but we never did, was keep communities of
5 interest together, areas that had been represented by
6 incumbents for a period of time who wanted to maintain their
7 representative, do that.

8 And the most ironic thing is that in my consideration race
9 wasn't a factor. In drawing these maps race wasn't a factor.
10 I was cognizant of BVAP, understanding that we are a voting
11 rights state. However, that was never the predominant factor.
12 But when we went to committee, regardless of what amendment I
13 put up, the only issue, nine times out of ten, just as you
14 heard on eight, the only issue that was discussed was race.
15 And I think that the most -- I think the most important thing
16 that Alan Clemmons continuously said was that if the BVAP went
17 down that it was a complete nonstarter. So it shows his hard,
18 fast line.

19 Q. Okay. Now, you were present on May 24, 2011 at -- for a
20 subcommittee meeting. This would be audio from Exhibit number
21 66, RWH022017. How about if you can play that. Listen to it
22 and what it is, okay?

23 (Audio played)

24 Q. Is that Mr. Young speaking?

25 A. Tom Young.

1 Q. Representative Young?

2 A. Yes.

3 (Audio played)

4 Q. So the last thing we heard, Mr. Young was running the
5 meeting that day?

6 A. No, they just took turns with me.

7 Q. Okay. Took turns with you. Okay. And Mr. Young
8 indicated that the law indicated that they could not decrease
9 a majority minority district below 50 percent?

10 A. At all.

11 Q. Ever?

12 A. If it wasn't at 50 percent. They could not reduce it at
13 all.

14 MR. STEPP: Excuse me, Counsel.

15 Q. (MR. HARPOOTLIAN) Was that Mr. Clemmons?

16 A. That was both. In the beginning it was Tom Young, in the
17 end it was Alan Clemmons.

18 Q. Both were members of the committee?

19 A. They were.

20 Q. And their position was you could not decrease BVAP on any
21 African American district.

22 A. Correct.

23 Q. They did it to you.

24 A. Well, you can not reduce it -- I don't know. They made up
25 the rules as they went, but if it was above 50 percent you

1 could not reduce it at all.

2 Q. At all. Okay. So that if it was a 90 percent African
3 American district could they reduce it to 89 percent?

4 A. No, not at all. It would be tabled immediately.

5 Q. Tabled immediately. Now, you are specifically talking
6 about Mr. Jefferson's district down in Berkeley County. What
7 was -- do you remember what the specific issue was y'all were
8 talking about, why would you'd be reducing his --

9 A. To allow African Americans in Dorchester County the
10 opportunity to choose a candidate of their choice. What was
11 going to happen in Dorchester County in Patsy Knight's
12 district was that after the African Americans there who
13 elected her in all likelihood would not have the opportunity
14 to elect a candidate of their choice, so I was attempting to
15 reduce the black voting-age population in one district and
16 boost the BVAP in the other district. And hoping not only the
17 African Americans in 102, in Joe Jefferson's district, have
18 the opportunity to elect him, but the African Americans in 97,
19 and there may be another district here, that's a while ago,
20 but especially 97 would continue to have the opportunity to
21 elect a candidate of their choice.

22 Q. Okay. Now, were you given during this process a copy of
23 the Department of Justice guidelines concerning the
24 redistricting under Section 5 of the Voting Rights Act?

25 A. I had a notebook, I believe, that was in there. It may

1 have been in there.

2 Q. Okay. And let me make sure I've got the copy. Do we have
3 a marked copy?

4 MR. STEPP: Defendant's Exhibit number 1.

5 MR. HARPOOTLIAN: It's Defendant's Exhibit number 1
6 but also Plaintiff's Exhibit number 70. We only have two
7 copies.

8 MR. KENNEY: There's two up there.

9 BY MR. HARPOOTLIAN:

10 Q. I'm going to hand the witness a copy. This is taken from
11 Defendant's Exhibit number 1, it's RWH00594, 595, 596, and
12 597. Now, this is part of a notebook you were given?

13 A. Yes.

14 Q. And who gave it to you?

15 A. Staff and counsel may have helped create it.

16 Q. And this was to be what the -- what was this to represent
17 to you?

18 A. I guess it was the law that we were supposed to use to
19 draw the plan.

20 Q. And on the first page, 595, it says Department of Justice
21 guidelines concerning redistricting under Section 5 of the
22 Voting Rights Act?

23 A. Correct.

24 Q. Let me take you back to page 0596, analysis of plans. And
25 let me read a portion of it to you and see if there was any

1 explanation or whether that was applied. It says, as noted
2 above there are two necessary components of the analysis of
3 whether a proposed redistricting plan meets the Section 5
4 standard. The first is a determination that jurisdiction has
5 met its burden of establishing the plan was adopted free of
6 any discriminatory purpose. The second is a determination
7 that the jurisdiction has met its burden of establishing the
8 proposed plan will not have a retrogressive effect. Right?

9 A. Correct.

10 Q. And then it goes down to describe retrogressive effect on
11 the same page, second column, about two-thirds the way down.
12 An analysis of whether the jurisdiction has met its burden of
13 establishing the proposed plan would not result in a
14 discriminatory or retrogressive effect starts with a basic
15 comparison of the benchmark and proposed plans at issue using
16 updated voting census data in each. It goes on to say, a
17 proposed plan, at the top of the next column, is retrogressive
18 under Section 5 if its net effect would be to reduce minority
19 voters', quote, effective exercise of the electoral franchise
20 when compared to the benchmark plan. Right?

21 A. Correct.

22 Q. And then it goes on to say, in determining whether the
23 ability to elect exists in the benchmark plan and whether it
24 continues in the proposed plan, the Attorney General does not
25 rely on any predetermined or fixed demographic percentage at

1 any point in the assessment. Rather, in the Department's view
2 this analogous determination requires a functional analysis of
3 electoral behavior within the particular jurisdiction or
4 election district.

5 A. Correct.

6 Q. Now, that point about retrogression, was this ever pointed
7 out --

8 A. I pointed it out in our committee. And the reason that I
9 pointed it out is because in most of my amendments, and not
10 all of my amendments, I actually used performance data. I
11 didn't just use raw numbers, I talked to -- first I talked to
12 Representative Clemmons about this fixed number that he and
13 counsel came up with that they weren't going to go below and
14 that they had their own definitions that we kind of made up as
15 we went.

16 But then I started talking to them about performance data
17 and how African Americans and minority voters actually turned
18 out. And just because you have a certain BVAP doesn't
19 necessarily indicate the performance. So we went through this
20 whole analysis of performance and looked at performance
21 numbers in various districts. However, I was the only person
22 that ever mentioned that in committee, and the only time that
23 it was mentioned was when I mentioned it, and it was never
24 used in any analysis on whether or not to table anything.

25 I think if you listen to the tape for hours upon hours the

1 only thing that they say when explaining a tabling motion as
2 to how you get rid of an amendment is race. Race, race, and
3 more race.

4 Q. So in terms of performance, or this criteria that the
5 Justice Department provides which -- let me read it again to
6 make sure that I'm using the right terms, because I will mess
7 it up. It says, the Attorney General does not rely on any
8 predetermined or fixed demographic percentages. Did your
9 committee in the House rely on any fixed or predetermined
10 demographic percentages?

11 A. Yes.

12 Q. Okay. And you had this document, all members of the House
13 had this -- all the members of your committee had this
14 document, correct?

15 A. Counsel had the document, yes, but nothing ever changed.

16 Q. Did you question specifically this document?

17 A. Yes.

18 Q. And did you point that out to the other members of the
19 subcommittee?

20 A. Yes.

21 Q. And their response was?

22 A. Race. I mean, if the BVAP was lower this is what we're
23 going to do, table. That was it.

24 Q. Did they ever distinguish or explain how that was
25 consistent or inconsistent with the guidelines you got?

1 A. No. Before I -- my blood boiled even more, I attempted to
2 get some clarification from counsel off the record, and that
3 clarification never happened either.

4 Q. So when you -- you proposed in this amendment to reduce
5 the BVAP, black voting-age population in Mr. Jefferson's
6 district?

7 A. Correct.

8 Q. Was he consulted on that?

9 A. Yes.

10 Q. Did he agree with that?

11 A. Yes.

12 Q. And the reason to reduce it was to keep --

13 A. Kept communities whole. We looked at incumbency,
14 protecting incumbency, and we looked at districts around him
15 and opportunity for African Americans, especially in 97, which
16 is a very poor rural area, encompasses Georgetown,
17 Hardeeville -- Hardeeville, excuse me, I can't remember which
18 one, and impacted the 9th District to allow them opportunity
19 to continue to elect the person of their choice.

20 Q. So you considered turnout?

21 A. Of course. I used performance.

22 Q. That would be the same thing.

23 A. Um-hmm.

24 Q. Compactness, was that an issue?

25 A. Correct.

1 Q. How about white crossover vote? Did you look at that?

2 A. We looked at white crossover vote.

3 Q. And other minority voting of black voters?

4 A. I looked at -- the legal term is coalition districts.

5 Q. And communities of interest?

6 A. My point in this amendment and communities of interest, my
7 point in this amendment was attempting to show counsel and
8 Alan Clemmons the fact that although you had a 40 percent
9 African American district, the performance thereof and
10 combined with other minority groups and white crossover vote,
11 you don't -- your African American elected officials will
12 still be -- African American elected officials or African
13 Americans in that district will have the opportunity to choose
14 the candidate of their choice.

15 Q. All these things you mentioned and asked in your
16 amendment, this amendment and other amendments, were they ever
17 considered by or discussed by that subcommittee?

18 A. No.

19 Q. Was -- now the term retrogression, did you ever hear that
20 word?

21 A. I used it a lot. I don't know if I used it right, but I
22 used it.

23 Q. Did they use it?

24 A. Yes.

25 Q. And when they said retrogression what did they mean?

1 A. They used the term retrogression -- I heard the term used
2 in two ways. One was a natural retrogression in which you
3 lost black population just over time.

4 Q. Right.

5 A. And one was a retrogression in which they would not allow
6 you -- we can go back to the 95 percent African American
7 district. If you reduce that to 94.5 percent Alan Clemmons
8 would clearly state that was retrogression. And I think Tom
9 Young stated that.

10 Q. Their definition, 95 to 94-and-a-half, can you do that
11 legally?

12 A. No.

13 Q. And they said that that would not be allowed?

14 A. I think the exact quote is probably that's a nonstarter.

15 Q. That's a nonstarter. Who said that?

16 A. Alan Clemmons.

17 Q. Now, did the House do any analysis either in subcommittee
18 or the House in general, did they do any analysis to indicate
19 what level of BVAP, black voting-age population, was necessary
20 to elect the African American candidate of choice?

21 A. No. They just used that hard number, they just used
22 census data. That was only thing used in this process, census
23 data. That's it.

24 Q. Did they use performance data?

25 A. No.

1 Q. No other minority group.

2 A. It was as if we only have black people and white people in
3 South Carolina.

4 Q. Are there any other minority groups in South Carolina?

5 A. Yes.

6 Q. And can they play a role in the election process?

7 A. I hope they do.

8 Q. Okay. Was there any analysis done in any of this process
9 that would indicate the BVAP levels in the benchmark plan were
10 insufficient to elect a black candidate? That is, when you
11 look at the benchmark plan was there any analysis done for
12 crossover voting?

13 A. No. No, there was no crossover voting in the upstate. We
14 have very large percentages of Latino voters, there was no --
15 we didn't look at performance, we didn't look at crossover.
16 We didn't look at white crossover, especially in Richland
17 County where you have a lot of white crossover voting.

18 Q. Mia Butler's district, for instance, was a 31 percent
19 African American district, it elected her twice, it elected
20 Anton Gunn, another African American once, and they increased
21 it to over 51 percent, correct?

22 A. I thought that was a perfect example of the overall intent
23 of the process.

24 Q. And did you discuss that with Mr. Clemmons?

25 A. I actually discussed with Mr. -- I'm not sure if we had a

1 discussion. I don't think her district was completely drawn
2 in subcommittee, but I did have a discussion with Chairman
3 Harrison about that.

4 Q. Chairman Harrison being?

5 A. Chairman Jim Harrison, chairman of the House Judiciary
6 Committee.

7 Q. So the plan would come out of that subcommittee to the
8 full committee, and you had a discussion with Mr. Harrison
9 about that. What was that discussion?

10 A. It got -- it got heated. I felt as if he was packing. I
11 thought that was plain and simple.

12 Q. What do you mean by packing?

13 A. He was putting all African Americans he could find in Mia
14 Butler's district.

15 Q. And his response to that was what?

16 A. I can't remember. It was probably no. We're -- it was
17 his amendment, I believe. I mean, the most amazing thing I
18 thought was that I had discussed this with Mia Butler, I had
19 discussed this with other African American people on our full
20 committee, and we were saying that, I mean, this was just
21 gross. There was absolutely no need for them to do that to
22 her district. I'm sure Mia Butler is comfortable with her
23 district now, I know she is comfortable with it and looks
24 forward to representing her people. However, her district
25 before, it was big, it was very large. But there was no

1 reason for them to go to 31 to 50. I just thought that that
2 was just gross. A conscious effort.

3 Q. They were conscious they were doing that?

4 A. Yes.

5 Q. How does Amendment number 1 differ from what was finally
6 passed, in terms of were there more majority minority
7 districts in the final plan, and how did that happen? For
8 instance, Mia Butler's district.

9 A. I know there was at least one more majority minority
10 district, that was Mia Butler's district, and I'm pretty sure
11 they bumped -- I think they bumped it up from 48 to 49 percent
12 BVAP to over 50.

13 Q. Any discussion on the floor about that?

14 A. I was pretty much through with the process by the time we
15 made it to the floor. I was a little bit put out by the tone,
16 tenor, the lack of counsel, all that stuff. I was just
17 frustrated.

18 Q. Now, let's talk about Congress for just a minute.

19 A. Okay.

20 Q. Was that different? How --

21 A. It was different. It was a more abbreviated process, it
22 was a shorter process because of drawing Congressional maps
23 is -- the process is wrought with difficulty. I tried to draw
24 mine, and because you have to get it down to the one or two
25 people there's no variance when you are drawing Congressional

1 maps.

2 Q. And let me back up. On the House plan there was a
3 variance of how much?

4 A. 2.5.

5 Q. In either direction?

6 A. So the magic number was 37,301.

7 Q. The magic number of --

8 A. Magic number of voters was 37,301.

9 Q. But two-and-a-half above, two-and-a-half below?

10 A. Right.

11 Q. When you went to Congress it was?

12 A. A lot.

13 Q. I mean, it was one?

14 A. Oh, one voter. I can't remember what the numbers were,
15 but it was one voter, maybe two.

16 Q. Okay. And were you frustrated with the process?

17 A. I was frustrated with the difficulty of the Congressional
18 process, yes.

19 Q. And was it more or less tightly controlled than the House
20 plan?

21 A. It was less.

22 Q. Was race used in drawing the Congressional maps?

23 A. Yeah. I mean race was still a big issue. Race was an
24 issue in particular in the Sixth District with my Congressman
25 Jim Clyburn. I adore Congressman Clyburn and I think

1 Congressman Clyburn is a wonderful public servant, and I
2 thought as if he was -- and I am pretty sure he will tell you
3 he doesn't necessarily need 56, 57, 58 percent African
4 Americans in his district, and I wasn't taking him below 50 in
5 any of my redraws or amendments. I may have taken him below
6 50 once or twice, but I felt we could put some African
7 American voters in other districts and allow African Americans
8 at the end of the day to elect the person of their choice.

9 Q. And when you put them in other districts and you looked
10 around, were you attempting to keep communities of interest
11 together?

12 A. Always.

13 Q. Compact?

14 A. Always.

15 Q. All --

16 A. What I would hope that you understand is that race was
17 never my predominant concern. Race, ironically enough, was a
18 concern of Alan Clemmons.

19 Q. Now, let's talk a little bit about the technical process
20 of drawing, not just of the Congressional maps but any of the
21 House maps. When you pull up a map like we see here is any
22 data shown on the computer?

23 A. Yes.

24 Q. What data?

25 A. People.

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1 Q. Number of people?

2 A. Number of people.

3 Q. Population.

4 A. Number of black voters.

5 Q. Number of black voters.

6 A. Number of white voters.

7 Q. Number of white voters.

8 A. Number of other voters.

9 Q. Black, white, and other?

10 A. And then the percentages.

11 Q. And percentages. Other than race?

12 A. And maybe precincts. May have been precincts maybe.

13 Q. Precincts?

14 A. The name of the precincts.

15 Q. But in terms of demographic data, what other data -- for
16 instance, was there any sort of -- partisan, how many Ds, how
17 many Rs?

18 A. No.

19 Q. Race?

20 A. Race, yes.

21 Q. Was the only data that appeared on the --

22 A. Oh, yeah, race appeared in everything.

23 Q. Whether it was the House or Congress you went to draw a
24 map and you moved it around, moved -- as you moved districts
25 around on the map or moved lines would the race numbers

1 change?

2 A. Yes.

3 Q. Okay. Show you how many white and the BVAP. Right?

4 A. Correct.

5 Q. Not partisan data.

6 A. No.

7 Q. How about the performance index? I mean how many --
8 who --

9 A. The only person that had performance data, that was me,
10 and I attempted to share but it didn't matter.

11 Q. Was partisan data available in the map room? Did they
12 have a separate listing of it somewhere, or performance data,
13 anything other than race, whereas --

14 A. I can't answer that because I never saw it, so I don't
15 know.

16 Q. Did you see it?

17 A. No. I don't know if it was available or not.

18 Q. You are on the subcommittee.

19 A. Yes.

20 Q. Were you in the map room?

21 A. Yes.

22 Q. That was there where all the maps were drawn.

23 A. Yes.

24 Q. Did you ever see anything concerning the data other than
25 race?

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1 A. No, just race and numbers.

2 Q. On the Congressional plan do you have an opinion as to
3 whether race was a predominant factor in drawing that?

4 A. Race and total number of people, yes.

5 MR. TYSON: Objection, your Honor. He's soliciting
6 an opinion that the witness is not prepared to testify about
7 or capable of.

8 JUDGE FLOYD: Overrule it.

9 Q. (MR. HARPOOTLIAN) Was race a predominant factor?

10 A. Yes.

11 MR. HARPOOTLIAN: Beg the court's indulgence.

12 (There was a pause in the proceedings)

13 MR. HARPOOTLIAN: Thank you, Representative Sellars.
14 Please answer any questions counsel might have.

15 JUDGE FLOYD: Cross-examination.

16 (There was a pause in the proceedings)

17 MR. STEPP: Your Honor, could I talk to counsel just
18 a moment?

19 (There was a pause in the proceedings)

20 MR. TYSON: If it please the court.

21 CROSS-EXAMINATION

22 BY MR. TYSON:

23 Q. Good morning, Representative Sellars. You know my name is
24 Rob Tyson, I represent Speaker Harrell and the House of
25 Representatives. I'm going to be cross-examining you today.

1 I've got a handful of slides I would like to go through, if
2 possible, I'm talking about a dozen about them, and I've got
3 some questions I'm going to ask you.

4 I'm going to apologize to the court for the trying to look
5 at an outline and trying to take Mr. Harpootlian's questions
6 and get them back in. It might not be as concise as it should
7 be, but I'm going to do my best that I can.

8 Let me just ask you quickly, you are an active member of
9 the Democrat party, correct?

10 A. Yes.

11 Q. And you've attended numerous Democratic caucus meetings?

12 A. Every morning Tuesday morning.

13 Q. And the chair of the Democrat party, Mr. Harpootlian, has
14 spoken at some of your caucus meetings?

15 A. Not some, he's spoken at one this year.

16 Q. Okay. What was that about?

17 A. It wasn't profound.

18 Q. Redistricting related?

19 A. No, it was actually about, oh, he was talking about -- no,
20 he was talking about running against Republicans.

21 Q. How about last year at your caucus meetings throughout the
22 redistricting process --

23 A. Yeah, last year we actually elected --

24 Q. -- earlier in the year?

25 A. We elected Dick last year, Mr. Harpootlian last year, and

1 he came and campaigned, as well.

2 Q. Let me just make sure, I'm going to try to sum up
3 testimony. If this isn't right, help me with it. Really you
4 just wanted another plan, right? You don't like the plan
5 that's out there, correct?

6 A. I mean, my greatest beef is that I felt as if people -- a
7 lot of sweat and blood and tears went into the Voting Rights
8 Act, and I felt as if the irony was that Alan Clemmons used
9 the Voting Rights Act to resegregate what so many people
10 fought against.

11 Q. And I heard you say that -- attribute those comments to
12 Representative Clemmons a number of times. And as the judge
13 said earlier, I didn't stand up and object as you were putting
14 those words in his mouth, but let me just ask you again, what
15 was the vote on the House plan on the floor? Do you recall
16 that?

17 A. No.

18 Q. I think it was over 85 members of the House voted for the
19 plan out of 124?

20 A. Correct.

21 Q. Okay. So there are plenty of members in the House that
22 supported it, correct?

23 A. There were many people who weren't involved in the process
24 at the level I was involved in. But at the end of the day, I
25 mean, you want to be happy with the district you are in

1 because, I mean, you represent these people.

2 Q. But your vote is no greater than theirs, is it?

3 A. Sometimes. No, it's not.

4 Q. You get a vote, you get to hold up yes or no?

5 A. Yes.

6 Q. And the majority of people in the House voted for the
7 plan, correct?

8 A. That's correct.

9 Q. And a large number of Democrats voted for the plan, too,
10 correct?

11 A. That's correct.

12 Q. And a large number of members of the Legislative Black
13 Caucus voted for the plan, too, correct?

14 A. That is correct.

15 Q. Okay. So let me sum it back up. Really you just don't
16 like the plan, but the other members of the House did like the
17 plan that's been approved by the General Assembly and been
18 precleared by the Department of Justice.

19 A. I think that's a stretch to say they like it. I think
20 some people tolerate it.

21 Q. They voted aye, right?

22 A. That doesn't necessarily mean you like something. You can
23 tolerate it.

24 Q. You talked about this performance analysis that you had
25 done.

1 A. Correct.

2 Q. Did you ever present any kind of data or spreadsheets or
3 anything like --

4 A. Oh, I had. I showed it to the members of the committee
5 when I proposed amendment -- my counsel, not -- I don't know
6 if I have an attorney in the room today, but my counsel, hired
7 by the Democratic Caucus, helped us come up with those
8 performance numbers and, yes, I did show that and showed it to
9 Alan Clemmons and showed it to other members of --

10 Q. Did you ever present any analysis when Mr. Clemmons spoke
11 or put an amendment on the table and you say here,
12 Mr. Chairman, other members of the subcommittee, I'd like
13 to --

14 A. I --

15 Q. Hold on a second. Did you ever say look at this analysis,
16 I performed this or members of the Democratic Caucus have
17 performed this, please take a look at this? Did you say that?

18 A. There were times when I did talk performance data, yes.

19 Q. Did you -- but did you show them specific data, is what
20 I'm trying to ask you? Did you ever present any specific
21 data? I understood you have an opinion --

22 A. I can not recall a specific instance, but I would say yes.

23 Q. Okay. I've read the transcripts and I couldn't find
24 anyplace where you offered anything into the record showing
25 any type of analysis besides what you're opining about now.

1 And that's what I'm trying to figure out, if I missed
2 something.

3 A. I think what we just read was not an opinion. In fact,
4 what I read was from the Department of Justice in which we had
5 a discussion about what was used and where we talked about
6 electoral behavior. And I actually brought this up. And if
7 you go back and listen to the record it was I who recited this
8 in committee, talking about performance data and other things
9 that should be used when creating these districts. So you are
10 right, I may not have -- I may have had the information and
11 may not have shown the performance data, but I did articulate,
12 not opine, but articulated what was in our guidelines about
13 performance data and the need to use it.

14 Q. And this is the Federal Register from February 9, 2011
15 that you are referencing?

16 A. Correct.

17 Q. And what is it titled? Department of Justice, and then
18 what is the title?

19 A. Guidelines concerning redistricting under Section 5 of the
20 Voting Rights Act.

21 Q. Under what section of the Voting Rights Act?

22 A. 5.

23 Q. Okay. Who has to preclear plans pursuant to Section 5?

24 A. The Department of Justice.

25 Q. Okay. And did they?

1 A. I believe so.

2 Q. So they didn't have any objections with the plans.

3 A. I didn't read their opinions so I can't state whether or
4 not they had objections or not.

5 Q. They didn't interpose any objections, did they? That's
6 why we're here today, because we got approved plans.

7 A. You are correct.

8 Q. Okay. And so if you look at the back of that page, too, I
9 just want to -- I think it's on the top of the -- in the
10 section that you were reading -- no, that's fine. We'll just
11 leave it at that. That doesn't have any relevance in today's
12 lawsuit, does it?

13 A. What?

14 Q. Whether the guidelines for Section 5 for the Department of
15 Justice, since the plans have been precleared, correct?

16 A. I would think it has a lot of bearing on what we do. Why
17 would it not? It came from the Department of Justice, talks
18 about the standards that are used in creating maps, and today
19 we're talking about creating naps. So I mean if somebody
20 wants to say we shouldn't use electoral behavior so be it, but
21 I think it's already stated that we should.

22 Q. I understand. It's just a simple question. If these are
23 the rules under Section 5 that the Department of Justice
24 issued guidelines on, and now they have analyzed the House
25 plan and the Congressional plan and the Senate plan and they

1 interposed no objection, then wouldn't it be fair to say that
2 they felt like our plans met these guidelines, correct?

3 A. I guess that's an opinion. I can't refute that.

4 Q. But they approved the plan.

5 MR. HARPOOTLIAN: If it please the court, I enter an
6 objection. The Department of Justice preclearance has a
7 certain weight, if you will. It is not binding, it is not --
8 to ask this witness to say, well, DOJ said it was okay, that's
9 not what preclearance is. And I don't know we even need to
10 get into that area.

11 MR. TYSON: Thank you, your Honor. I'll move on.

12 Q. (MR. TYSON) Let me ask you about the redistricting, the
13 election law subcommittee that you were a member of. Did you
14 do any preparation before you served on that committee?

15 A. Yes.

16 Q. What was that?

17 A. I did -- went through our notebooks, attempted to study as
18 much as I could. I learned a lot throughout the process.
19 Helped set up meetings, organize meetings, helped organize my
20 meeting in Denmark that we had at Voorhees College. So we did
21 some groundwork for them.

22 Q. Okay. But as to the legal aspects of the Voting Rights
23 Act, did you study any aspects of that?

24 A. I mean, I went to law school and I also, you know, I was
25 fortunate enough to graduate law school. And my father was

1 director of African American studies for a period of time at
2 University of South Carolina. So I was very familiar with the
3 Voting Rights Act. And I did go back and brush up before
4 going in.

5 Q. Okay. Did you attend any seminars?

6 A. No, I did not attend any seminars. But I know seminars in
7 D.C. -- no, I did not.

8 Q. How about the notebook the sub provided you? Did you --

9 A. We went -- you know, that's how I found this, I went
10 through it.

11 Q. Okay. I'm going to go through, if I can, the Powerpoint
12 and just -- these are straightforward questions I would like
13 to ask you about the subcommittee. The first one that we
14 have, these are the criteria that were adopted by the
15 subcommittee, correct, or the first page of that, correct?

16 A. We adopted these during our first meeting, much of which
17 was not recorded.

18 Q. No, but the vote on the -- this is the criteria that you
19 approved, correct?

20 A. Correct, but I'm --

21 Q. And you voted for it.

22 A. I did.

23 Q. And let me just look at the first part that says these are
24 the guidelines and the criteria for the congressional and
25 legislative redistricting, right?

1 A. Correct.

2 Q. And these are with the guidelines that you were supposed
3 to use as members of the subcommittee as you drafted the
4 plans, correct?

5 A. Correct.

6 Q. And if I heard your testimony earlier, I believe you said
7 you don't think the subcommittee used these criteria. Is that
8 a fair assessment of your --

9 A. For the most part, correct.

10 Q. Part correct?

11 A. Yes, correct.

12 Q. Okay. So as we go through some of these examples, if I
13 show you areas where the subcommittee did use these criteria
14 would that surprise you?

15 A. I mean, I can't answer that until you ask the question.

16 Q. Okay. Let's look at the first one, the constitutional
17 law. Because redistricting plans shall comply with the
18 constitution, correct?

19 A. I hope everything we do complied with the constitution,
20 correct.

21 Q. How about the next page in the Powerpoint, Voting Rights
22 Act? Redistricting plans shall comply with this, correct,
23 with the Voting Rights Act?

24 A. Yes.

25 Q. Okay. And clearly the plans as adopted by the House and

1 the House and Congressional plans have met with Section 5,
2 they comply with Section 5 of the Voting Rights Act, correct?

3 A. Okay.

4 Q. Do you know if the complaint by Mr. Harpootlian and the
5 plaintiffs is about --

6 A. I'm familiar with that, yes.

7 Q. -- concerns Section 2?

8 A. I'm familiar with that. You asked about Section 5.

9 Q. I know. I'm saying -- okay. And in this the next factor
10 you have, it says race may be a factor considered in the
11 creation of the plans, correct?

12 A. Yes.

13 Q. It can be a factor.

14 A. It doesn't say it should be the only factor.

15 Q. Correct. And, in fact, it goes on and it says concerning
16 the plan, and if you flip to the next page it says and must
17 not unconstitutionally predominate over other criteria set
18 forth in these guidelines, correct?

19 A. Correct.

20 Q. And so as we talk about what predominate means, what would
21 your definition of predominate mean?

22 A. My definition of predominate is every amendment that was
23 put up in that committee was tabled by Representative Alan
24 Clemmons based on race, and that was the predominant pervasive
25 factor.

1 Q. By Representative Clemmons.

2 A. And Representative Young, if you listened to the last
3 tape.

4 Q. And that one amendment, he asked questions concerning what
5 the percentages of the black voting-age population in those
6 districts were, correct?

7 A. In that tape we listened to, correct, and there was
8 absolutely -- and there was absolutely nothing else.

9 Q. He asked about population, didn't he?

10 A. He asked me about black voting-age population.

11 Q. But he asked about population. If we went on and played
12 the further part into the transcript and listened to it he
13 would then raise issues about population, right?

14 A. The population had to be 37,301.

15 Q. It had to be?

16 A. Two-and-a-half percent in one direction.

17 Q. That's what he was raising. I mean that was his question,
18 he was making sure it was consistent, yes?

19 A. Yes. But it had to be consistent.

20 Q. Let me step back. If you had the benchmark plan where all
21 of the ideal districts you just testified a second ago that it
22 was 37,301, correct?

23 A. Correct.

24 Q. And so when we took the old lines and then we plugged in
25 the census data not every district was 37,301, was it?

1 A. No.

2 Q. Not every district was within two-and-a-half percent of --
3 up or down, correct?

4 A. Correct.

5 Q. So we had to go to population to get the districts within
6 deviation.

7 A. Correct.

8 Q. And that's what Tom Young's question was about, correct?
9 About population, making sure they were within deviation.

10 A. Yes. And I'm saying that my amendment was within
11 deviation. That wasn't the reason he tabled the amendment.
12 The reason he tabled the amendment, if we listen to the tape,
13 was based on BVAP, or Alan Clemmons moved to table the
14 amendment was based on BVAP. If you listen to any of the
15 tapes and you go back through and look at the reason that Alan
16 Clemmons tabled anything it wasn't based on population, it
17 wasn't based on anything else but black voting-age population.

18 Q. And I am not arguing or trying to belabor that point,
19 Representative Sellars. I'm trying to be clear, you said
20 Representative Young did that, and I'm saying if we go back
21 through the transcript, if Mr. Harpootlian would have played
22 further into the transcript we have a lot of discussion about
23 Mr. Young asking about population.

24 A. Okay.

25 Q. So there were other reasons besides sides race, was my

1 point.

2 A. That's not accurate. The only reason that -- only reason
3 we had the discussion and the only reason that the amendment
4 was tabled was based on race. That part of the discussion had
5 no bearing on whether or not that amendment passed or not.

6 Q. You don't know what Representative Horn thought about
7 that, do you?

8 A. I know I was there and I know whether or not the amendment
9 passed or not. And I know why it failed.

10 Q. You know why Representative Clemmons voted for it,
11 correct, or what you --

12 A. Motioned to table.

13 Q. Correct. And he gave reasons --

14 A. The same reason.

15 Q. He gave a reason. He didn't give all the reasons, did he?

16 A. All I know is what the man says. I can't testify to
17 what's in his head.

18 Q. Representative Horn didn't say anything on that amendment,
19 did she?

20 A. She didn't say that he was wrong.

21 Q. And Representative Young also had other questions besides
22 race or besides BVAP, correct?

23 A. That had -- that was not substantive, though. It was --
24 didn't have any bearing on whether or not that amendment
25 passed or not.

1 Q. Let's go through here and we will talk about whether it
2 was substantive or not. But let me make sure on this, race
3 must not predominate. If there are other reasons besides race
4 that are considered by members of the subcommittee, by members
5 of the floor -- by members of the full committee or by the
6 members of the House, then race isn't going to predominate, is
7 it?

8 A. I don't understand your question.

9 Q. Okay. We have got the criteria and we will move through
10 them in a few minutes. Contiguous, equal population,
11 incumbency protection, and those things. If those reasons are
12 mentioned, are referenced as why somebody voted one way or the
13 other for those, then race clearly couldn't have predominated,
14 right?

15 A. I don't agree with that. I mean, we got to a point now
16 where they were -- they used race to object to the first 20
17 amendments. So there may have been a point when they switched
18 gears and used another reasoning, but I can't recall.

19 Q. I'm just asking a simple question. If there are reasons
20 that are raised besides BVAP, such as these other criteria
21 we're about to go through, then clearly race couldn't
22 predominate, right?

23 A. I don't agree with that.

24 MR. HARPOOTLIAN: Objection, your Honor. He's asked
25 the question, it's been answered.

1 JUDGE FLOYD: Sustained.

2 MR. HARPOOTLIAN: Thank you.

3 Q. (MR. TYSON) Let's go to the next page, please. We got
4 the state constitution and the laws, right?

5 A. Correct.

6 Q. That was that criteria. And then the next one, equal
7 population and deviation.

8 A. Correct.

9 Q. So you have -- and that's based on the census and what we
10 were just talking about, and that's the 37,301, correct?

11 A. Yes.

12 Q. Okay. And then we go to the next page and we go the ideal
13 population, and that's the number, 37,301. Correct?

14 A. Yes.

15 Q. And then you've got about halfway down it talks about
16 nevertheless, any overall deviation greater than five percent
17 equality, a district shall be justified when it's the result
18 of these other reasons. Correct?

19 A. Yes.

20 Q. Okay. But that's a criteria to look at population, right?

21 A. Yes.

22 Q. Okay.

23 A. I mean, our amendment would be immediately ruled out of
24 order, they would not even be heard. A point of order would
25 be made if your amendment did not fall within 2.5 one way or

1 2.5 in another. So you could not -- we would not even have a
2 discussion about an amendment that did not abide by this
3 because it would be ruled out of order.

4 Q. Because it was a criteria that the subcommittee approved
5 that doesn't have anything to do with race.

6 A. So any discussions we had about population on an
7 amendment, they were purely just discussions, they were not
8 substantive as to whether or not that amendment passed or not.
9 Because if there was an issue with this particular criteria
10 the amendment would immediately be ruled out of order. I'm
11 sorry. I didn't mean to mess up your screen.

12 Q. That's all right. But as to that, though, just -- the
13 population is a criteria that the subcommittee had to use, and
14 if it wasn't used, if it was out of whack, then it was out of
15 order and it never got brought up?

16 A. Correct.

17 Q. So it's consistent with this criteria, that the --

18 A. Yes.

19 Q. And then contiguity, congressional and legislative
20 districts shall be comprised of contiguous territory, right?

21 A. Correct.

22 Q. And you know of any district that is not contiguous?

23 A. Not that I know of. That's subjective, but not that I
24 know of.

25 Q. It's subjective?

1 A. I think you can -- we had a lot of districts that were
2 long and windy that some people would say were -- abided by
3 those principles, some people said they didn't. But I can't
4 recall one, not one that sticks out.

5 Q. Areas which meet only at the points of the adjoining
6 corners shall be considered --

7 A. We have anything with a gap, you're right.

8 Q. So we met that criteria, too.

9 A. Yes.

10 Q. And that's not race related.

11 A. No.

12 Q. How about compactness? This is important, also, as a
13 criteria, correct?

14 A. Yes.

15 Q. Okay. And but then the second sentence there talked about
16 bizarre shapes are to be avoided, correct?

17 A. Yes.

18 Q. And then it gives some exceptions, though, if you are not
19 able to comply with that for these variety of reasons,
20 correct?

21 A. Yes.

22 Q. And you haven't testified about anything that's any
23 bizarre shapes, have you?

24 A. But we did see a bizarre shape in District 102. In the
25 amendment we just looked up was a horseshoe and to me a

1 bizarre shape. Joe Jefferson's district, if you actually go
2 back and look at it, it's a horseshoe.

3 Q. Did it pass?

4 A. Oh, it passed. But I don't think that that necessarily
5 abided by the guideline, but it passed. I mean, it's a
6 bizarre-shaped district.

7 Q. And it's consistent with what it looked like the last
8 time, right?

9 A. Yeah. It was bizarre before.

10 Q. Okay. Let's go to the next slide. Communities of
11 interest. This first line says what?

12 A. Communities of interest shall be considered in the
13 redistricting process.

14 Q. Okay. And then it lists below there a variety of factors
15 that are -- contribute to communities of interest. Do you see
16 that?

17 A. Yes.

18 Q. Do you think that the subcommittee adhered to those, or
19 the full committee or the House?

20 A. No.

21 Q. Okay. City boundaries?

22 A. No.

23 Q. Did you ever have any discussions about city boundaries?

24 A. Yes.

25 Q. Okay. How about the City of Waltherboro?

1 A. Yes.

2 Q. Is it whole inside the plan now?

3 A. It is whole.

4 Q. Okay. And let me make sure that I understand. I think
5 earlier you testified there was nothing you ever heard in a
6 public hearing that ever was implemented into this plan,
7 and --

8 A. That's correct.

9 Q. Okay. And we went to public hearings, two that I went to,
10 the folks from Walterboro, they came out --

11 A. They came to two meetings.

12 Q. And what did they say?

13 A. We want one representative in Colleton County because it's
14 33,000 people.

15 Q. And as to Walterboro City, what did they say?

16 A. After further discussion, especially with the mayor of
17 Walterboro, and in further discussions I had with him I said
18 the best we will be able to do is keep Walterboro whole, and
19 Walterboro is now whole.

20 Q. What he did he testify to at --

21 A. He wanted Colleton County to have one representative.

22 Q. What did the mayor of Walterboro testify to?

23 A. I can't recall. If he testified to keeping Walterboro
24 whole, that would be accurate.

25 Q. Okay. So if he's testified to that and then the people at

1 the public hearing testified to that and that's in the final
2 plan are you sure your testimony earlier is still --

3 A. That was their number one goal. At the public hearing the
4 number one goal was to have one representative in Colleton
5 County. And if you go back and listen to the first tape at
6 the first meeting that we had in Beaufort, that is what the
7 council said, they wanted one representative in Colleton
8 County.

9 Further, when I stated earlier today and Mr. Harpootlian
10 asked me was anything -- were the public hearings, and I
11 stated the public hearings were not implemented into the
12 process, we can go to Walterboro, but we can also go to
13 Anderson when the mayor of Anderson said he would like to keep
14 the City of Anderson whole, and that has a large African
15 American population. And if you look at the plan today, is
16 the City of Anderson whole the answer to that question is no.
17 So I stand by what I said earlier.

18 Q. Yeah, but there were other people at the public hearing
19 that said they wanted the City of Walterboro to be whole,
20 right?

21 A. Yes.

22 Q. And there were other people that said they wanted the
23 county to be whole, right?

24 A. They wanted the county to be whole.

25 Q. Not Colleton County, but many other people across the

1 state wanted their county to be whole.

2 A. I remember Colleton and Barnwell.

3 Q. In all the public hearings, if you go through the
4 transcript, that is clear, that's what --

5 A. I just remember those two.

6 Q. And that would be a community of interest, right?

7 A. I'm sorry?

8 Q. That would be a community of interest.

9 A. Yes.

10 Q. And this, the plan that's been precleared by the
11 Department of Justice, has counties that are whole, or --

12 A. Some.

13 Q. Pardon? Some, that's my point. That is exactly my point.
14 We can't make all of this right, can we?

15 A. I agree with you. Because if we can't go back to single
16 member districts I agree with that. My only point earlier was
17 that we didn't hear public testimony. I don't recall public
18 testimony on all 46 counties, but what I do remember public
19 testimony on is Barnwell wanted to be whole, they're not
20 whole, the City of Anderson wanted to be whole, and the City
21 of Anderson is a unique case in there are a large percentage
22 of African Americans in the city, and in our plan those are
23 fragmented and placed in other districts.

24 Q. Let me just ask you about that amendment, I think it was
25 the first one Mr. Harpootlian put up. It was number eight,

1 and it was the one about Barnwell County. He didn't show you
2 down there the tip of it, did he? Did he talk about what it
3 did to the County of Walterboro and the City of Walterboro?
4 Do you remember that?

5 A. No, he didn't ask me.

6 Q. What did it do to the City of Walterboro and the County of
7 Walterboro?

8 A. It put me in Colleton County where I am now. I was --

9 Q. Split it?

10 A. Colleton County was already split.

11 Q. And they split more, correct?

12 A. I don't know. I mean, now Colleton County has four
13 representatives. I believe in my amendment it had four
14 representatives.

15 Q. But my point is, though, you were saying that Barnwell,
16 the citizens of Barnwell wanted something.

17 A. Yes.

18 Q. And that you wanted this and Representative Hosey wanted
19 something?

20 A. Yes.

21 Q. Correct? Okay. But when you have an amendment you don't
22 get to look at it in isolation, do you? Because it affects
23 other areas.

24 A. Correct.

25 Q. So it's -- when your testimony is that we didn't follow

1 the people of Barnwell, we didn't listen to Representative
2 Hosey and his people, you failed to mention what it did to
3 Walterboro and how that went against the public input,
4 correct?

5 A. But it maintained the consistency of what the plan does
6 now and what the plan was doing already, that that is
7 consistent. If you are going to have four representatives in
8 Colleton County on Amendment 1, and in my amendment if we're
9 still going to have four representatives in Colleton County
10 you maintain that consistency. And I went in with the premise
11 understanding that you can not make every county whole, but
12 where we could have a county -- and Colleton County has 33,000
13 people, Barnwell County is not, if we can keep Barnwell County
14 whole we should. We did not do that.

15 Q. And there are other reasons for that, correct?

16 A. I don't know. I didn't draw that.

17 Q. No, but you know all the majority minority districts that
18 are there, correct?

19 A. Yeah, we have a lot.

20 Q. And you know of all the loss of population?

21 A. Oh, yes. My district was one that suffered.

22 Q. Those had to be taken into account as you drew that,
23 right?

24 A. Yes. But if you -- even if you take that into account I
25 had the proper number of people, I was within deviation, we

1 found the people, so that wasn't an issue.

2 Q. For you.

3 A. For anybody.

4 Q. But it would be for other districts.

5 A. Which district? I guess I can't ask a question.

6 Q. You are saying we will go -- if you are talking about
7 Barnwell, if you picture an amendment and you say this --

8 MR. HARPOOTLIAN: Your Honor, I hate to object. This
9 is repetitive and argumentative. I object.

10 JUDGE FLOYD: Overruled.

11 Q. (MR. TYSON) I'll just finish with that, Representative
12 Sellars. The amendment that Mr. Harpootlian showed you on I
13 think it was Amendment 8 concerning Barnwell County, it didn't
14 also take into account the subcommittee's discussion or the
15 other full committee's discussion or the floor concern about
16 how it split Walterboro, did it?

17 A. We talked about that in subcommittee.

18 Q. And that's a reason, right, which is consistent with
19 communities of interest, that's my point.

20 A. No, that was not the reason. We just listened to the
21 tape. The reason the motion was tabled was because I lowered
22 Lonnie Hosey's BVAP. That was on the tape, that didn't come
23 from me. And, in fact, the quote -- that quote from Alan
24 Clemmons was that this was a nonstarter based on the fact that
25 that lowered his BVAP. It wasn't because of Colleton County,

1 it wasn't because of me, it wasn't because of public input or
2 any other guidelines. There was one reason. I'm not making
3 this up, there was one reason.

4 Q. For Representative Clemmons.

5 A. And no one else stated anything else.

6 Q. Let me ask you then about your statement that I think you
7 said earlier that you are not sure anybody can come up with
8 one example of anything that we heard at the public comments
9 that was implemented. Do you remember that testimony?

10 A. Yes.

11 Q. Okay. How about the Denmark public hearing? Were you
12 there?

13 A. Yes. A mile away from my House.

14 Q. You know Mr. Alonzo Frazier?

15 A. Yes.

16 Q. He's from Allendale County, correct?

17 A. Yes, I remember Mr. Frazier. I know Mr. Frazier very
18 well.

19 Q. Do you know what he testified to?

20 A. I can't recall.

21 Q. He said he wanted the Sixth Congressional District to dip
22 into Allendale County because he felt like Allendale had a lot
23 in common with the other Sixth District counties. Do you
24 remember that?

25 A. I do remember that.

1 Q. Did the congressional plan as approved by the House and
2 Senate do just as he said?

3 A. Well, let me narrow my statement down. I don't think
4 anything that we heard in public testimony was used in the
5 creation of our House map. Not congressional, but our House
6 district map. And I'm actually very pleased that Allendale
7 County and Barnwell County, for that matter, are in the Sixth
8 District.

9 Q. But if we went on through, if we talked about Terry Jowers
10 from Williston, and he wanted Barnwell to be included with
11 Beaufort in a congressional. He didn't want that again,
12 right? Do you remember that testimony?

13 A. Yes.

14 Q. And this was done, correct?

15 A. Like I -- I'm not disagreeing with you. I agree we used
16 public testimony in creating the congressional maps.

17 Q. Let's go to the next slide, incumbent protection.
18 Reasonable efforts shall be made to ensure that incumbent
19 legislators remain in the current districts. Was that abided
20 by?

21 A. We did our very best to do that.

22 Q. Okay. So that was --

23 A. It was very difficult, and I must commend especially Jim
24 Harrison for doing everything he could to abide by this
25 principle.

1 Q. So that criteria that's in the plan that was approved by
2 the subcommittee has been abided by, correct?

3 A. Oh, we -- this one was one that was very difficult, but I
4 have to give a lot of deference to Representative Harrison for
5 abiding by that.

6 Q. And that's not race related, is it?

7 A. Well, implementation thereof is -- it's difficult, because
8 you have -- for example, we had Denny Nelson who's in a
9 district with Robert Williams, and the problem that we have
10 was finding enough African Americans to lift BVAPs and the
11 population of the Pee Dee. So the actual implementation of
12 this is race related.

13 Q. Well, the population was the problem there, correct, it
14 wasn't race?

15 A. But you just can't bring anybody into a district. I mean,
16 they had to go find African Americans to put in the district.

17 Q. Well, how about let's go to the upstate where we
18 collapsed -- a district was collapsed, correct?

19 A. Yes.

20 Q. Who were the House members that are now not in the same
21 district?

22 A. Dan Cooper and Eric Bikas, former member Dan Cooper and
23 Eric Bikas.

24 Q. Okay.

25 A. And Tribble and -- and the guy next to him.

1 Q. They are not African Americans, are they?

2 A. No.

3 Q. So the incumbent protection is not race related for that,
4 is it?

5 A. No, but you had to take race into account when you were
6 dealing with Denny Wilson and Robert Williams.

7 Q. On this incumbent protection language, that was important
8 to you, correct, that you offered an amendment?

9 A. Yes. I can't recall what my amendment was.

10 Q. I think it went back to change the language, as I recall.

11 A. Um-hmm.

12 Q. Similar to what was in the criteria --

13 A. It was in the criteria before. But, like I said, that
14 part of the tape, it's not present.

15 Q. Let's go to the next. Here's the priority of the
16 criteria. And this was the subcommittee's attempt to try to
17 establish what was important, correct?

18 A. Yes.

19 Q. Okay. And so it's pretty clear that there are certain
20 things that the criteria has got to abide by, correct?

21 A. Yes.

22 Q. Voting Rights Act, correct?

23 A. Yes.

24 Q. Equality of population?

25 A. Yes.

1 Q. And the constitution.

2 A. Yes.

3 Q. Okay. And then the last one is public input. This one
4 was added, as I recall, subcommittee shall make reasonable
5 efforts to be transparent and allow public input into the
6 redistricting process. And if I heard you earlier, you
7 commended the subcommittee for that part of the process.

8 A. Yeah. And in hindsight I would actually add a line at the
9 bottom that we actually have to use what the public says in
10 drawing the map, but we didn't. The process, I don't have any
11 beef or any qualms with the process. Again, I will state for
12 the record anytime I'm asked, Jim Harrison did a very good job
13 in making sure that the process was sound.

14 Q. And we just went through some of the public comment that
15 was implemented in the plans, correct?

16 A. In the Congressional plan. You didn't give me any
17 implemented in the House plan.

18 Q. How about let's go to the next one. Here is your
19 criteria -- I mean here was your amendment to the criteria,
20 correct, 3.

21 A. Huh?

22 Q. This was your first amendment to the criteria.

23 A. Oh, okay.

24 Q. Do you recall that? And if we just look at it, it's
25 essentially the same thing that the subcommittee put, right?

1 Communities of interest, incumbent, core constituencies,
2 correct?

3 A. Yes. Number three is what I really like. Just added a
4 little clarity.

5 Q. That's a constitutional problem, isn't it, absence of a
6 discriminatory purpose?

7 A. Yeah.

8 Q. And the subcommittee said that that was already
9 encompassed in the criteria, correct?

10 A. I just don't think we wanted it spelled out in our
11 guidelines.

12 Q. How about we look at the next one.

13 A. Well, number four was also important.

14 Q. Retrogressive effect.

15 A. Packing the minorities in one or more districts, I think
16 that also this was not necessarily agreed to.

17 Q. And do you recall the discussion from the subcommittee
18 member saying that that was already encapsulated in the other
19 criteria?

20 A. I know we went -- I spoke for three hours on this and I
21 can't recall everything.

22 Q. How about your next amendment?

23 A. Which one?

24 Q. I'm sorry. Avoid partisan gerrymandering.

25 A. Yep.

1 Q. Is that a traditional redistricting criteria?

2 A. Should be. I'm not sure if it's traditional or not.

3 Q. Why is that?

4 A. You should avoid partisan gerrymandering when drawing your
5 map. This isn't -- I mean, we're -- because we don't own
6 these seats, this isn't about us, it's about the people of
7 South Carolina and drawing boundaries that best reflect and
8 allow them to choose people that best serve them.

9 Q. I understand that. But isn't redistricting one of the
10 most partisan activity legislatures undertake?

11 A. I would agree with you. I think that the irony is that
12 this is the complete irony of me being here today. I think
13 that Alan Clemmons used the Voting Rights Act and race to
14 partisan gerrymander.

15 Q. I understand what you think about Mr. Clemmons,
16 Representative Clemmons, but there are 12 other members of the
17 House, correct?

18 A. Well, there aren't 12 other members who actually drew the
19 plan. That's just not the way it works. That's not
20 realistic.

21 Q. But the Democrats had a position on redistricting,
22 correct?

23 A. We had amendments that we put up, correct.

24 Q. Republicans had amendments that they liked, and they liked
25 plans, too, correct?

1 A. It's what we have.

2 Q. Okay. How about the next amendment? I mean Amendment
3 number 3. That's to ensure transparency and public
4 disclosure, and that was taken care of, correct?

5 A. Well, we had an issue -- no, that wasn't just public
6 disclosure, it was also sufficient time to review and
7 opportunity to comment prior to voting on the plan. And my
8 fear was that we were going to put forth a plan and just run
9 it down and run it because we had like this time issue. So I
10 was afraid the public would not be able to see what we were
11 doing and I wanted to make sure that we were -- I wanted to
12 make sure the public had the opportunity to see what we were
13 doing, and I actually wanted this process to be as transparent
14 as possible.

15 Q. And it was, correct?

16 A. I think there were some issues about time when people
17 could see the maps on line, but other than that -- the Senate
18 was extremely transparent. The Senate had the website up and
19 all this other good stuff. They were rocking and rolling over
20 there. We kind of came along with the House. I don't have
21 any qualms about transparency.

22 Q. On the website all the House -- the plans and amendments
23 were put up on the --

24 A. Um-hmm.

25 Q. -- after they were approved, correct?

1 A. The only thing we don't have is the three hours of
2 testimony that we had in which we talked about race,
3 incumbency, and things like that. And that's just by accident
4 we don't have that.

5 Q. And let me ask you about that. I think at that meeting
6 there was an accident that the tape --

7 A. There was Patrick Dennis made an accident.

8 Q. And I think one of the members of the committee, or it
9 might have been counsel, said if you would like to submit
10 written comments to talk about -- to describe what you said in
11 these three hours that you were welcome to do it, correct?

12 A. I just -- I mean, that was unrealistic and over
13 burdensome. You wanted me to record three hours of comments I
14 just said, I thought that was unrealistic, so I just kept us
15 there a little longer and tried to regurgitate for the tapes
16 what I said.

17 Q. Okay. But those comments were then regurgitated.

18 A. I couldn't get every point in, but I made an effort.

19 Q. So that part of the process, I mean, eventually your
20 comments -- unfortunately the accident occurred and the tape,
21 somebody forgot to turn the tape machine on, but those
22 comments were then incorporated?

23 A. I tried.

24 Q. Okay. Let me ask you about some of your amendments. One
25 of the amendments, I think it was Amendment number 14 that you

1 offered, and it was to include the Town of Latta in
2 Representative Battle's district. Do you recall that one?

3 A. If you have it.

4 Q. I don't have it here in front of me. I'm sorry.

5 A. I don't -- I drew up a lot of amendments. I don't
6 necessarily recall it.

7 Q. You remember this one was also on the floor? Do you
8 remember that?

9 A. If I did something I may have done it for a member. I
10 can't recall. If you can show it to me that would help me
11 out, but if you don't have it, I don't have it.

12 Q. All I had from it, we didn't have language, I guess it was
13 Representative Hayes wanted to take out some of his territory
14 that had been given to him in the Town of Latta and provide
15 that to --

16 A. I can't comment on that. I don't remember.

17 Q. I was going back through the tapes and was listening to
18 your -- some of your testimony, and you were talking about an
19 amendment in York County involving Representative Moss and
20 Pope. Do you recall that one?

21 A. Do you have it?

22 Q. I don't have the amendment. I was going to see if I could
23 find the language.

24 A. I'm not trying to be difficult, and I apologize, I just --
25 I mean, I don't want to speak something and not know. I just

1 can't -- I really can't recall. I did a lot of these.

2 MR. TYSON: Excuse me, indulge me for a second.

3 (There was a pause in the proceedings)

4 JUDGE FLOYD: How much longer will you be on your
5 cross?

6 MR. TYSON: Ten minutes.

7 JUDGE FLOYD: And --

8 MR. HARPOOTLIAN: No more than five or ten minutes.

9 JUDGE FLOYD: Let's take about a ten minute break and
10 wrap it up. The court reporter does not have an easy job.
11 About ten minutes.

12 MR. TYSON: Thank you, your Honor.

13 (A recess transpired)

14 JUDGE FLOYD: I'll give a you a multiple choice
15 question. I'm guessing you're all correct about your timing,
16 you will finish up about 12:15, 12:20. We can break for an
17 hour at that point or we can get into the qualification
18 questions of your expert.

19 MR. HARPOOTLIAN: Your Honor, Mr. Stepp and I were
20 just discussing that. Our druther would be to break after
21 this witness and then take Dr. McDonald --

22 JUDGE FLOYD: Straight through.

23 MR. HARPOOTLIAN: -- straight through.

24 JUDGE FLOYD: That's fine. All right. That's what
25 we will do.

1 MR. HARPOOTLIAN: Thank you.

2 JUDGE FLOYD: Mr. Sellars, you're back up.

3 THE WITNESS: Yes, your Honor.

4 JUDGE FLOYD: All right.

5 BY MR. TYSON:

6 Q. Representative Sellars, I was talking to you about an
7 amendment between Mr. Pope and Mr. Moss and I have a
8 transcript of the full committee hearing on June 6th, and I'm
9 just going to ask you if it's all right we're just going to
10 read a couple of lines to you and see if this refreshes your
11 memory.

12 And it was an amendment the chairman, I guess full
13 committee, so Mr. Harrison says, I spoke to both of the
14 parties regarding this one and they think there's been an
15 agreement. And that's -- then that's what -- that's that what
16 would happen here. And then the chairman, says, okay, Mr.
17 Sellars, and you said, I've got a quick question. We just
18 adopted an amendment that dealt with Representative Pope's
19 district, and I know it was a swap but I don't think it was
20 necessarily an even swap. I just want to be sure that if we
21 adopt this amendment then not only Tommy, but Dennis, they
22 will all be within deviation. Because I see that Amendment
23 29, if I'm not mistaken. Do you recall that discussion?

24 A. Not really. But you have a transcript, okay.

25 Q. It's a discussion about population --

1 A. Yes.

2 Q. -- the full committee was having, has nothing to do with
3 race, correct?

4 A. The amendment passed, I believe.

5 Q. And the prior page, when the amendment -- you were talking
6 about it, you described the amendment and said Mr. Moss and
7 Mr. Pope, Mr. Moss represents this district, Mr. Pope
8 represents House district number 47 and involves one community
9 of interest. One community of common interest, an area called
10 the Philbert community, takes about 260 people from here and
11 moves those over there. It's basically preserving a community
12 of interest.

13 A. Who said that? I said that?

14 Q. Yes.

15 A. That's in line with everything I have been talking all
16 morning, that I was attempting to use the traditional
17 redistricting principles, but I'm not certain that Clemmons or
18 some others on my committee were.

19 Q. The full committee adopted that amendment, correct?

20 A. Yes.

21 Q. Okay. So that criteria was abided by. You raised the
22 issue and the full committee said yes, we agree with you, this
23 is a community of interest, which is in our criteria and we
24 need to adopt it and they adopted it, correct?

25 A. Yes.

1 Q. Okay. Not race based?

2 A. But, I mean, it's not race based because you are talking
3 about Moss and Pope. Moss is a white Republican, Pope is a
4 white Republican. It's not race based. We weren't dealing
5 with African American elected officials, we're talking about
6 two districts where the African American population was very,
7 very low. I mean, no, we didn't -- it wasn't a conversation
8 about race. It wasn't -- it wasn't an issue.

9 Q. That's right. And if we -- let me move on in the
10 testimony. You said something about the Congressional process
11 was a little bit --

12 A. It was difficult.

13 Q. And why was that? What was different about it, or more
14 difficult about it?

15 A. You have seven districts that you are drawing and you have
16 to actually get the districts down to the particular number,
17 do that number. So it's very hard to draw those. You
18 actually have to rub out voters on streets to get to the
19 deviation that's allowed by our federal courts.

20 Q. But nothing was -- I'm sorry. I thought your testimony
21 earlier was talking about the process of how the Congressional
22 plan was developed was different.

23 A. It was different. It was abbreviated. I think he asked
24 me, and there was not as much care and guidance given to that
25 process by Alan Clemmons as it was with the House plan.

1 Q. And there are 123 other members besides Mr. Clemmons,
2 right?

3 A. Yes.

4 Q. And they had an amendment they wanted to offer to the
5 Congressional plan, they had the opportunity to come in and
6 make that amendment, correct?

7 A. We only had seven or -- I don't know. We may have had 20
8 amendments, but by comparison we did not have a lot.

9 Q. But the process was the same, is my point, correct?

10 A. Very generically, yes.

11 Q. Nobody was told they can't draw anything --

12 A. No, no --

13 Q. Nobody couldn't use --

14 A. No, no --

15 Q. The amendment couldn't be --

16 COURT REPORTER: Excuse me. Could you talk one at a
17 time, please.

18 Q. Excuse me.

19 A. I apologize. I was talking over you.

20 Q. The process was the same.

21 A. The process was sound. Everybody was allowed in the map
22 room, everybody was allowed to put up amendments. I mean,
23 it's just the issue that if your amendment dealt with a
24 district where there was a person of color who represented a
25 large percentage of people with color, people of color, then

1 that is when race became an issue, became the predominant
2 factor, whether or not it was the Congressional plan or House
3 plan.

4 Q. Let me move on. Yesterday in your deposition I asked you
5 a question about whether you had a conversation with the chair
6 of the South Carolina Democratic Party, Mr. Harpootlian. Do
7 you recall that?

8 A. Yes.

9 Q. And you said, if you allow me to read from the transcript.
10 I said, when did you have that discussion? And you said well,
11 when -- after he submitted his proposed map to the court. So
12 I said, so after the lawsuit began? And you said yeah. I
13 said, what were those conversations? You said, what was Chris
14 thinking when he drew the lines? It was just -- there were a
15 lot, there were members who were concerned about whether they
16 were in their district. And I was just making -- why I was
17 concerned, where I was in my district. Do you remember that?

18 A. Yeah, it was yesterday.

19 Q. Okay. And that I further say, and that was we're talking
20 about the submission by the plaintiffs in this case, correct?

21 A. Yes.

22 Q. Okay. And so you didn't like the plan, and I think you
23 further, as you went on, you -- well, you --

24 A. I never stated I didn't like the plan, did I?

25 Q. I'm sorry, correct. You said what was Chris thinking when

1 he drew the lines. And Chris is -- who is Chris?

2 A. The guy who was messing up the computers earlier.

3 Q. Chris Kenney, a lawyer with Mr. Harpootlian, correct?

4 A. Yes.

5 Q. And so you reference him as drawing the alternative plan?

6 A. I assumed. It was an assumption.

7 Q. And what was the problem again with that alternative plan
8 submitted by the plaintiffs?

9 A. Well, I received a phone call from Chairman Harrison, who
10 called many members asking had we seen the plan. He stated I
11 was in Lonnie Hosey's district. He called me back 30 minutes
12 later and said I wasn't in Lonnie Hosey's district. We
13 weren't in the same district, we were a hundred yards apart.
14 So I just called the person who submitted the plan and said
15 you know what's going on? We -- he was off in New York or LA,
16 wherever Dick Harpootlian goes, and it was a very brief
17 conversation. That was it.

18 Q. Do you know whether any other -- in that alternative plan
19 how many other incumbents were paired against each other?

20 A. I have no idea. I haven't actually seen it. I got a
21 phone call from Chairman Harrison telling me that. I've never
22 seen it.

23 Q. But you weren't comfortable with that plan, is that right?

24 A. I'm comfortable now. I'm in my own district. I thought I
25 was in a district with Lonnie Hosey and that wasn't true.

1 Q. Yesterday when we had the discussion, I think you
2 referenced when I asked the question about your potential
3 testimony today, you also referenced District 52, Laurie
4 Funderburk, and --

5 A. Oh, yeah.

6 Q. I asked you the question, I said, if you will beg my
7 indulgence again just to read through a couple of questions, I
8 said, what are you -- what do you plan to testify about the
9 Funderburk district and/or Boyd Brown? And your response was,
10 I'm just going to have to go back and refresh my memory. I
11 just remember that that was one of the districts in which we
12 talked about a population being placed in another district
13 that caused some issue. Correct?

14 A. Yes.

15 Q. Okay. Then my next question was, say that again. And you
16 said yesterday, population that was a Democratic voting
17 population that was placed in another traditionally Democratic
18 district. I believe that to be true. Do you recall that?

19 A. It was yesterday, yes.

20 Q. So you were concerned about Democrats being swapped for
21 Democrats, right?

22 A. No. No, not at all.

23 Q. That was what you said yesterday.

24 A. No, you're misinterpreting what I'm saying. You are
25 interpreting what I was saying. I was saying Democrats being

1 taken out of Laurie Funderburk's district, or people who have
2 a performance of voting Democratic and being placed in another
3 district, Boyd Brown's district, I believe. I'm not saying it
4 wasn't a swap of any sort, it was just Laurie Funderburk's
5 district would become a very, very difficult district for the
6 incumbent to stay in.

7 Q. Okay. And that's based on what?

8 A. Performance.

9 Q. And what performance? What analysis?

10 A. Democratic performance, electoral performance.

11 Q. Democratic performance?

12 A. Democratic performance. Or I mean Republican performance,
13 if you look at it in the --

14 Q. Which is not race based, correct?

15 A. I mean, you take a lot into account.

16 Q. Okay. Let me ask you about the City of Anderson. You
17 referenced that and a discussion that you said the mayor had.
18 And I was going back looking through listening to the audio
19 tapes, and this was involving District 23. Do you remember
20 that, Representative Dillard?

21 A. That's -- why would we be talking about the City of
22 Anderson and Chandra Dillard? Dillard's in Greenville.

23 Q. I guess because there was an amendment offered, number 27,
24 and it was on May 24 of the hearing. And when you were
25 debating, again if you will allow me, and while y'all were

1 debating in the subcommittee, debating and/or affecting these
2 districts, do you remember stating that you wanted to make a
3 district more competitive?

4 A. Okay.

5 Q. And then, I'm not sure, I think it was Representative
6 Young, I couldn't tell which one it was on the tape, it might
7 have been Representative Clemmons --

8 MR. HARPOOTLIAN: Your Honor, again, I understand
9 we're being given wide latitude. It seems to me counsel is
10 testifying now. He can ask this witness if he remembers this,
11 but to say I've read this and it says that or I listened to
12 this, it says that, we have attempted to transcribe some of
13 these tapes, they are very difficult to understand. So I
14 ask -- I object to him stating.

15 (There was a pause in the proceedings)

16 JUDGE FLOYD: I would allow you all were under the
17 gun, in terms of taking a deposition yesterday. However, I
18 would sustain Mr. Harpootlian's objection. You can ask the
19 question you want. If he gives you an answer different from
20 the deposition then you can impeach him with the deposition.

21 MR. TYSON: Thank you, your Honor.

22 JUDGE FLOYD: And I know you are trying to move it
23 along.

24 MR. TYSON: Thank you, your Honor.

25 Q. (MR. TYSON) Let me just ask, do you remember that

1 discussion about that amendment, I think it's Amendment 24,
2 excuse me, involving Representative Dillard as she moved down
3 into Henderson?

4 A. I don't recall.

5 Q. Okay. Let me ask you about District 116, Representative
6 Robert Brown?

7 A. Okay.

8 Q. And you testified earlier about natural retrogression?

9 A. Yes.

10 Q. And let me make sure I understand that. His benchmark
11 black voting-age population was approximately 42 percent, is
12 that right?

13 A. When you say benchmark --

14 Q. The benchmark plan when the old district -- when the
15 census data was put into it, that it was in the low 40s?

16 A. Yes. He was -- when it was drawn originally in early
17 2000, or whenever the map was drawn, it was 48. But when you
18 looked at his district using new census numbers it was at 42.

19 Q. And then in the House plan out of full committee and
20 subcommittee what happened to his black voting-age population?

21 A. It went down.

22 Q. Okay. And did you offer an amendment to increase his
23 black voting-age population?

24 A. I'm not sure.

25 Q. But if you did, would that be okay?

1 A. To increase his black voting-age population?

2 Q. Right.

3 A. Yes.

4 Q. But not to decrease it.

5 A. I'm having a hard time following your train of questions
6 here.

7 Q. Okay. Representative Brown let's say, I don't have the
8 numbers right here, I think it was 42.2 percent is where he
9 was in the benchmark plan of his black voting-age population.
10 Then when the plan came out of full committee it was lower
11 than 40 percent or I -- I mean lower than the 42 percent.

12 A. Correct.

13 Q. And you offered an amendment to get it back up to the
14 42 percent, correct?

15 A. I think. I can't recall. I may have.

16 Q. And my question was is that okay while in the same breath
17 you've testified it's not okay to decrease BVAP in other
18 places.

19 A. I testified that it's not okay to decrease BVAP in other
20 places?

21 Q. You have characterized, if I'm -- let me try this again.
22 Representative Clemmons, you have said that he had a hard and
23 steadfast line. I believe this was your testimony?

24 A. Yes.

25 Q. About any amendment that lowered BVAP.

1 A. Correct.

2 Q. That that wouldn't work.

3 A. Correct.

4 Q. Okay. But my question is you've got an amendment to
5 increase BVAP.

6 A. Correct.

7 Q. Okay. And are you okay with that, whether we get to lower
8 it here or raise it here with those inconsistencies?

9 A. How is that -- that's not inconsistent.

10 Q. How so?

11 A. Because Representative Clemmons had a hard, steadfast line
12 you can not lower BVAP in districts that were above
13 50 percent. It's kind of apples and oranges, because all I
14 was trying to do was raise Robert Brown's BVAP through an
15 amendment, and his BVAP was 48 and it dipped down to 42. I
16 think we passed it at 40, and all I was trying to do was raise
17 it. I don't understand how that's inconsistent.

18 Q. So you are offering an amendment just based solely on race
19 to increase his BVAP, correct?

20 A. I was offering an amendment to increase his BVAP, yes,
21 sir. I mean, race was a predominant factor in what we were
22 doing.

23 Q. For the amendment that you --

24 A. No, no, the process.

25 Q. Let me ask you, I think Mr. Harpootlian asked you about

1 something and you characterized some examples if a district
2 was in the high 90s, I think you testified that if it was
3 lower just a small percentage point then that would have been
4 objected to by Representative Clemson.

5 A. Correct.

6 Q. But there's no district like that, is there?

7 A. No. We do have districts that are -- Grady Brown's
8 district is 68, maybe. It's very, very high. And, you know,
9 attempting to take anything out of that district was a
10 problem. You looked at some of my original county colleagues,
11 Rich Hart, Todd Rutherford, Leon Howard. We had Joe Neal, we
12 had all these districts. I mean, and, you know, any
13 opportunity we had to maybe give African Americans in other
14 districts a chance to choose a -- a person of their choice was
15 just rejected.

16 Q. But that is in the hypothetical that you were discussing.
17 I just wanted to be sure there's nothing like that in the
18 House plan or any House districts, correct?

19 A. 90?

20 Q. Yep.

21 A. There may be one 90, I don't know. I can't answer that
22 for a fact. Jerry Govan is pretty high, too.

23 Q. You are talking about electing a candidate of choice.
24 District 79, you know that district?

25 A. I know 90 and 91.

1 Q. Representative Mia Butler Garrick?

2 A. Yes.

3 Q. Okay. And that's not her district, though, is it? I mean
4 it's the people's district.

5 A. The people of South Carolina's district.

6 Q. And you made -- I think you testified earlier that you
7 were opposing or that you did not like what the House did to
8 that district.

9 A. Correct.

10 Q. And what were your reasons?

11 A. Because I did not agree with the fact that they were
12 taking a district that was 30 percent African American and
13 making it 50 percent African American strictly using numbers
14 when they did not look at electoral performance. Because what
15 performance numbers would have shown you, white crossover
16 voters, other minority groups, what performance would have
17 shown you is that Anton Gunn probably should have won six
18 years ago but he won -- he probably should have six years ago
19 but he won four years ago, and Mia Butler was elected and then
20 reelected, I think. So we had African Americans that were
21 elected in a 31 percent district, 30 percent district. There
22 was no need. And it was a conscious effort by Jim Harrison
23 and others to pack that district.

24 Q. Let me ask you, talking about performance numbers, did you
25 do any analysis concerning that?

1 A. Oh, an analysis was done.

2 Q. I asked the question did you do any of that.

3 A. Oh, no, I didn't do any of the analysis myself. I don't
4 do math well.

5 Q. When you testified earlier that she was the candidate of
6 choice, that was your opinion, that's not based on any
7 factual --

8 A. That is based on the facts.

9 Q. And how --

10 A. It's based on the fact they chose her. Every November and
11 every June we have elections, we are held accountable through
12 elections, and they chose her and she was the candidate of
13 choice.

14 Q. Do you know whether Representative Butler Garrick has ever
15 had opposition in the Democrat primary?

16 A. I don't know. If you don't have opposition apparently the
17 constituency is happy in what you are doing. So, again, they
18 choose you.

19 Q. But you haven't done any analysis to determine whether she
20 was the candidate of choice, is that correct?

21 A. Yes, I have done analysis to prove she's a candidate of
22 choice. Every November she won her election and -- Anton Gunn
23 had a primary, I believe, I think he had a primary, and he had
24 a general election. And he had a green party, a blue party, a
25 Republican, and Anton Gunn won and he was the candidate of

1 choice.

2 Q. Did he have any democratic opposition in the primary to
3 determine whether he was the Democratic minority's candidate
4 of choice?

5 A. He may have. I think he did, actually. He did. I think
6 he had a primary both times. I can't recall. But I do know
7 he won his election.

8 Q. He won his election, but do you have any analysis as to
9 whether he was the candidate of choice?

10 A. Yes.

11 Q. And that is just simply the election results. That's the
12 only analysis you have?

13 A. That's the only analysis you can do when you determine
14 somebody's -- the choice candidate.

15 Q. And you know this lawsuit is about a bunch of statistical
16 evidence supporting or not supporting candidates of choice,
17 correct?

18 A. I don't -- I don't do math -- I don't do math well.

19 MR. TYSON: Your Honor, if I can hand up this case,
20 please, pass it up.

21 MR. HARPOOTLIAN: Which case is it?

22 Q. (MR. TYSON) Representative, I wanted to ask you, you were
23 talking about you were the only one -- I think you called it a
24 perversion of law, is what the subcommittee was doing, is that
25 correct?

1 A. Yes.

2 Q. And I think you said earlier you were the only one that
3 had any law, is that correct?

4 A. I said that on tape.

5 Q. And you said it yesterday and in your deposition, too.

6 A. Okay, yes.

7 Q. Because I thought when I asked you what were some of the
8 problems with the process, and you said you expected to
9 testify about the perversion of law --

10 A. I said there was no problems with the process but there
11 was some issues that I had which I considered to be
12 perversions of law, correct.

13 Q. All right. And then I think Mr. Harpootlian discussed or
14 played this tape of you handing this case up. Do you recall
15 that testimony a few minutes ago?

16 A. Yes.

17 Q. And it was the Howe versus Armor case, 1991 district court
18 case from the Eastern District of Ohio?

19 A. Yes.

20 Q. Okay. And did you know that that case has over a dozen
21 negative citing references?

22 A. I don't have any -- okay, I don't have it in front of me
23 or the little red flags beside it, so I don't know.

24 Q. Did you know that of those, the dozen references, it was
25 declined to be followed or rejected in over a dozen

1 jurisdictions?

2 A. Okay.

3 Q. So when you were citing this is the law, I've got law,
4 everybody, I've got law, had you done the research to
5 determine whether it was good law or not?

6 A. I just want you to understand the context, that we did
7 have counsel in the room, you and others were in the room, and
8 nobody stated that I was actually in fact incorrect.

9 Q. And then the Fourth Circuit case has declined to accept
10 it. Did you know that when you offered it up?

11 A. I did not know that when I offered it up.

12 Q. Well, and then you just said that counsel failed to
13 mention anything to you. Do you recall somebody asking you
14 about the case Bartlett versus Strickland at that hearing?

15 A. I don't recall that.

16 Q. Okay. 2009 U.S. Supreme Court, and somebody suggested
17 that to you and they asked you to read that. Do you recall
18 that?

19 A. I probably did read it. I don't know. I don't recall.

20 Q. But let me just -- a couple of more questions to finish
21 up. Part of the process after the plan was precleared by --
22 the plans were precleared by the House it was submitted to the
23 Department of Justice for preclearance, correct?

24 A. Yes.

25 Q. And you testified I think yesterday in your deposition

1 that you were interviewed by the Department of Justice.

2 A. I was.

3 Q. Correct? And I think you said yesterday, and if my
4 testimony is -- if my characterization of your testimony is
5 not completely accurate let me know, but I think you said all
6 of the things and the problems that I've told you in your
7 deposition is what I told the Department of Justice.

8 A. I believe that to be accurate. I may have left some
9 things out, but for the most part --

10 Q. And so the testimony you provided today presumably would
11 have been similar type of discussion that you provided to the
12 Department of Justice?

13 A. Probably not on this micro level. I mean, today we were
14 able to actually talk about amendments, look at amendments,
15 and listen to the recorded testimony so we could actually get
16 to clear view of what I felt to be a wrong done by the
17 representatives.

18 Q. Yesterday at your deposition you said they had listened to
19 all of those tapes, right?

20 A. I believe they did. They told me that they had.

21 Q. So they heard all of your testimony.

22 MR. HARPOOTLIAN: If it please the court, your Honor,
23 the Department of Justice's analysis, approval, is irrelevant
24 to this judicial inquiry. There's an executive branch, you
25 are the judicial branch. I hesitated to object to this

1 before, but we keep going into what he told DOJ, what DOJ did
2 to do a Section 5 analysis, and that's it. And that's --
3 we're here on Section 2 and a constitutional violation. So
4 the fact that he told them is one thing, the fact that's an
5 inference that they didn't do anything about it is irrelevant
6 to these proceedings. I object.

7 MR. TYSON: Your Honor, if I can just respond to it.
8 You will recall Mr. Harpootlian showed Representative Sellars
9 the Section 5 guidelines of the Department of Justice and he
10 testified about that for ten minutes. I was responding to the
11 Department of Justice inquiry as raised by Mr. Harpootlian.

12 JUDGE FLOYD: Gentlemen, I think we have heard enough
13 about that issue from both sides.

14 MR. TYSON: Thank you, your Honor. I failed -- Mr.
15 Stepp wrote me a note. I would like to introduce and mark as
16 an exhibit the case that we handed up, please, as the next
17 exhibit.

18 JUDGE FLOYD: All right.

19 Q. (MR. TYSON) Representative Sellars, let me just ask,
20 isn't it accurate to say the House and Congressional plans as
21 enacted are plans that you would not have enacted if you had
22 been in the majority party, is that correct?

23 A. I don't know. Me being in the majority party now is just
24 a dream, so I can't say that to be a fact.

25 Q. Let me just finish, have you given us every possible

Sellars - Redirect

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1 reason why you think race predominated?

2 A. To the best of my ability. I mean, if you asked more I
3 probably may come up with more examples. But, I mean, right
4 now that's --

5 MR. TYSON: Representative Sellars, thank you for
6 your patience.

7 THE WITNESS: Thank you, Mr. Tyson.

8 JUDGE FLOYD: Redirect?

9 MR. HARPOOTLIAN: Briefly.

10 REDIRECT EXAMINATION

11 BY MR. HARPOOTLIAN:

12 Q. Representative Sellars, I believe you indicated the first
13 three hours of this committee hearing with the tape were not
14 taped for some -- somebody didn't hit the right button?

15 A. Correct.

16 Q. And there's no nefarious purpose?

17 A. No, no. In fact, Patrick is awesome, so there is no
18 nefarious purpose.

19 Q. So a lot of what was said in that subcommittee, how many
20 hours is there of subcommittee recordings?

21 A. Of that meeting?

22 Q. Of any -- all the meetings put together.

23 A. I have no idea. It's a bunch.

24 Q. But this was the initial meeting.

25 A. Correct.

1 Q. And so you've indicated that you have made many statements
2 about your problems with the process.

3 A. Yes.

4 Q. And those were not recorded.

5 A. No.

6 Q. But you summarized them for us here today.

7 A. Yes.

8 Q. You were asked about a number of the criteria that were
9 listed in the standards adopted by the House subcommittee that
10 you were going to use in the process. You would agree with
11 all those standards, would you not?

12 A. Yes.

13 Q. The question I have of you is were they followed?

14 A. No.

15 Q. Okay. And I guess the one last question I have is this:
16 There was some debate about keeping cities and counties --

17 A. Whole, communities of interest.

18 Q. Whole. Do you have an opinion as to whether or not that
19 was used as a proxy for race in some instances?

20 A. I mean, that's a good question. I think that -- and not
21 abiding by those principles, the reason they didn't abide by
22 the principles had a lot to do with race. Keeping the City of
23 Anderson whole would have allowed African Americans in
24 Anderson County to elect a person of their choice. And that
25 was not going to happen.

1 Q. And he asked you about Mia Butler and Anton Gunn's
2 district.

3 A. Correct.

4 Q. And you determined that Mia Butler was candidate of choice
5 but she got elected.

6 A. Yes.

7 Q. Now that district -- she is African American, I believe
8 she's seated right back here, isn't she?

9 A. Yes, sir.

10 Q. And she's an African American?

11 A. Yes.

12 Q. The district is 31 percent African American?

13 A. Yes.

14 Q. So is it -- is it a reach to say that non-African American
15 voters voted for her in substantial numbers for her to win?

16 A. That's not a reach.

17 MR. TYSON: I object to that, your Honor. There's no
18 statistical evidence for him to support such a --

19 THE WITNESS: Yes --

20 MR. HARPOOTLIAN: I went to Clemson but I don't think
21 this is complicated math. 31 percent African American, you've
22 got to get 51 percent to win.

23 JUDGE FLOYD: The question has been asked and
24 answered.

25 MR. HARPOOTLIAN: Thank you.

1 JUDGE FLOYD: It's in the record.

2 MR. HARPOOTLIAN: Yes, sir.

3 Q. (MR. HARPOOTLIAN) So is that how by your analysis she's a
4 candidate of choice?

5 A. Yes, using my fundamental mathematical skills.

6 Q. Right. Now, there's been a discussion that this Amendment
7 1 passed with a majority of the members of the House voting
8 for it, correct?

9 A. Yes.

10 Q. In terms of amendments to that plan, were a majority of
11 them done in subcommittee or on the floor?

12 A. Subcommittee.

13 Q. The vast majority?

14 A. Overwhelming majority.

15 Q. So the modifications to that plan were done in
16 subcommittee, and were they -- were they introduced by members
17 of the subcommittee or by other members?

18 A. They had to be introduced by members of the subcommittee.

19 Q. I'm sorry?

20 A. They had to be introduced by members of the subcommittee.

21 Q. And so that would be you and four others, correct?

22 A. Yes.

23 Q. Did the white members of that committee introduce the
24 majority of amendments or did -- to Amendment 1, or did you
25 and your African American --

1 A. Karl Allen and I.

2 Q. And so in this process we have two African Americans and
3 three non-African Americans, three white folks, right?

4 A. Yes.

5 Q. And the tension in that committee is between the white
6 folks and the black folks. Is that an oversimplification?

7 A. It's between Representative Clemmons and I.

8 Q. Okay. White and black?

9 A. Yes.

10 Q. And race -- was any criteria other than race ever
11 discussed between you two in terms of the amendments being
12 made?

13 A. The amendments that were tabled, to my recollection, were
14 all tabled based on BVAP and race.

15 Q. Now, and maybe I have asked this before, I want to make
16 sure because of a question by defense counsel. Were there
17 any -- was there any statistical analysis shown to you of
18 what's called racial bloc voting in that process?

19 A. Shown to me by --

20 Q. By Mr. Clemmons or any staff member.

21 A. No.

22 Q. How about any sort of analysis, partisan analysis, D
23 versus R?

24 A. No.

25 Q. Any sort of racially polarized analysis?

1 A. No.

2 Q. Did the House have any sort of demographics expert, any
3 sort of voting rights expert at that stage?

4 A. Well, we retained the Wyche firm, House caucus. But you
5 mean the Democratic Caucus or the House as a whole?

6 Q. The House as a whole, Mr. Clemmons or Mr. Harrison?

7 A. Oh, yeah, we had attorneys.

8 Q. You had lawyers, but did you have any demographics expert?

9 A. We had a map -- professional map drawer, but that was it.

10 Q. Right. Let me make sure that -- I want to make sure I
11 understand this. Prior to passing the plan in the House did
12 Dr. Brunell -- did you ever hear that name?

13 A. No.

14 Q. Did you ever meet with a Dr. Brunell?

15 A. Don't know who that is.

16 Q. Today, as you sit here today do you know who that is?

17 A. Mm-mmm.

18 Q. Okay. Thank you.

19 THE WITNESS: Thank you.

20 JUDGE FLOYD: All right. Thank you, Representative
21 Sellars. You may step down. Any reason he can't be released
22 from his subpoena?

23 MR. HARPOOTLIAN: No, sir, not from plaintiff.

24 JUDGE FLOYD: All right. Thank you. We'll break for
25 lunch, and be back here right at 1:30. As you know, we're

1 going to go until 6:00 o'clock tonight. So that's our plan.

2 MR. HARPOOTLIAN: If necessary.

3 JUDGE FLOYD: If necessary.

4 (A recess transpired)

5 JUDGE FLOYD: Yes.

6 MR. HARPOOTLIAN: We're ready to go whenever you are.

7 JUDGE FLOYD: All right. I understand methodology is
8 challenged in this case?

9 MR. STEPP: Yes, your Honor. Before we even get
10 there I've got a housekeeping matter, if the court would hear
11 that. This morning we had a conversation about admitting the
12 exhibits, and I want the record to be clear, one of the
13 exhibits that was on the plaintiffs' prior list was Dr.
14 Engstrom's report, and the court's already granted a motion in
15 limine on that, so I didn't want my statement this morning to
16 be a waiver of the benefit of that order, which we assume is
17 still in place. Secondly --

18 MR. HARPOOTLIAN: May I address that? We don't
19 intend on introducing Dr. Engstrom's report. However, it will
20 be one of the items that this witness relies on in giving his
21 opinion. That, I mean it's obviously hearsay, but we believe
22 under the rules we will deal with that when this comes up.

23 MR. STEPP: I just want to make it clear that my
24 saying all the exhibits are not including Dr. Engstrom's
25 report.

1 Now, the second thing, housekeeping, is that it's
2 come to my attention that after we reconvened this morning the
3 plaintiff filed supplemental exhibits, which I was unaware of
4 at the time we had the colloquy earlier this morning, one of
5 which is Plaintiffs' Exhibit 69. That's Dr. McDonald's
6 supplemental tables, what I call a supplemental report.
7 There's a motion pending as to that. So I'm certainly
8 reserving our objection to that, which I understand the court
9 will take up during the course of Dr. McDonald's examination.

10 Another thing on here are election results, this is
11 Exhibit number 71, election results summary generated from
12 public data and the House preclearance submission. I haven't
13 had time to look at that. I want to reserve the right to pose
14 an objection if I think there's any reason why the summary
15 doesn't fairly and accurately depict the data. I have no idea
16 at this point, so I just want to reserve an objection on that,
17 if I might.

18 Same thing with the demonstrative maps of House
19 amendments and demonstrative shape files of silhouette images.
20 Again, I have no reason to think those are not accurate but I
21 would like to reserve the right to object in the event
22 anything comes to our attention that would suggest they were
23 not, one or more of them are not. And I think the others we
24 don't have a problem with.

25 JUDGE FLOYD: Now, let me make myself clear for the

1 court. We will put Dr. McDonald up here and you go through
2 your examination with him. They have noted an objection to
3 the methodology, but we are going to deal with the methodology
4 during -- we're not going to give you a ruling today, but we
5 will deal with it in the order, as to whether we put any
6 credence to his testimony or not. So that we can move it
7 right along.

8 MR. STEPP: All right. Well, Mr. Mustian is going to
9 do Dr. McDonald's cross-examination, and we were planning to
10 in the voir dire examination do some examination that we think
11 would be in aid of the position we have taken with respect to
12 both his initial report and the supplemental report. So we
13 will just make that record. My understanding is y'all will
14 rule on that later, is that correct?

15 JUDGE FLOYD: Right. But you are going to do it
16 through -- during the cross.

17 MR. STEPP: Part in voir dire and part in cross. We
18 do want to raise -- go into those subjects on voir dire. I
19 guess we thought you would consider the motion then. If you
20 don't want us to do that we will do it whatever way you want.

21 MR. HARPOOTLIAN: Your Honor, of course, our position
22 would have been during voir dire, methodology, is he qualified
23 to testify based on his qualifications, has he been qualified
24 before. The methodology, obviously, we can argue about
25 whether this methodology is valid or not. But, again, in the

1 interest of time given all other factors is he qualified as an
2 expert, and they can take that on cross and we would address
3 it a little bit on direct. Just to not repeat things.

4 JUDGE DUFFY: To make the record complete, we granted
5 you all Monday to supplement the record so you can tell us how
6 you think the proof conformed to your various theories. So
7 y'all can still do that. So far as the reports are concerned,
8 the supplemental report, take all that up with the witness
9 while he's on the stand. The same way you go about voir
10 diring the witness, just do it through cross-examination.
11 Fair enough?

12 MR. HARPOOTLIAN: Yes, sir.

13 MR. STEPP: Thank you.

14
15
16 I certify that the foregoing is a correct transcript
17 from the record of proceedings in the above-entitled matter.

18 Date: 3-5-12

s/ Daniel E. Mayo

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